

chapter C-80

PUBLIC CURATORSHIP ACT

*Chapter C-80 is replaced by the Public Curator Act (chapter C-81). (1989, c. 54, s. 198).
1989, c. 54, s. 198.*

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REPEAL SCHEDULE

DIVISION I

DEFINITIONS

1. *In this act, the following words mean:*

(a) *“hospital centre” : a hospital centre within the meaning of the Act respecting health services and social services (chapter S-5);*

(b) *“regulation” : a regulation made by the Government under this act.*

1971, c. 81, s. 1; 1974, c. 71, s. 1.

DIVISION II

PUBLIC CURATOR

2. *The Government shall appoint a person to act as Public Curator.*

1971, c. 81, s. 2; 1978, c. 15, s. 140; 1982, c. 46, s. 1.

2.1. *The term of office of the Public Curator is not over five years; he remains in office at the expiry of his term until he is reappointed or replaced.*

1982, c. 46, s. 1.

2.2. *The Government shall fix the remuneration and the other conditions of employment of the Public Curator.*

1982, c. 46, s. 1.

2.3. *The Assistant Public Curator and the other members of the personnel required for the carrying out of this Act are appointed and remunerated in accordance with the Public Service Act (chapter F-3.1.1).*

The Public Curator has in respect of his personnel the powers of the chief executive officer of an agency within the meaning of the Public Service Act.

1982, c. 46, s. 1; 1983, c. 55, s. 161.

2.4. *The Assistant Public Curator shall assist the Public Curator in carrying out his duties and replace him when he is absent or temporarily incapacitated.*

1982, c. 46, s. 1.

3. *Every document signed by the Public Curator shall be prima facie evidence of its contents, without it being necessary to prove his signature and authority.*

1971, c. 81, s. 3.

4. *When written declarations are to be sworn to by the Public Curator, they may be sworn to under his oath of office.*

1971, c. 81, s. 4.

5. *The books and accounts of the Public Curator shall be audited each year by the Auditor General and also whenever so ordered by the Government. The Government may, however, appoint another auditor to audit such books and accounts of the Curator as relate to the property administered by him.*

The report of the Auditor General and, as the case may be, the report of the auditor appointed by the Government shall accompany the annual report of the Public Curator.

The fees of any auditor appointed by the Government shall be paid out of the revenues of the Public Curator.

1971, c. 81, s. 5; 1974, c. 71, s. 2; 1982, c. 46, s. 2; 1985, c. 38, s. 84.

DIVISION III

FUNCTIONS OF THE PUBLIC CURATOR

6. *The Public Curator shall be curator ex officio to every mental patient who is not provided with a tutor or curator and whose incapacity to administer his property is attested by a certificate of the director of professional services or any physician authorized by him where such patient is treated.*

Following a written recommendation stating the reasons therefor from a psychiatrist who has examined the patient, the director of professional services or the physician shall send promptly to the Public Curator such certificate, and any other document or information determined by regulation.

1971, c. 81, s. 6; 1974, c. 71, s. 3; 1974, c. 39, s. 67; 1975, c. 64, s. 19.

7. *The Public Curator shall have over the person and property of the patient, or, if a curator to the person is appointed, over the property only, the powers and obligations of a tutor, but he shall not have custody of the person.*

Nevertheless the patient shall have the entire administration of the proceeds of his personal work done during the curatorship.

1971, c. 81, s. 7.

8. *The Public Curator may, in the manner provided for by sections 13 to 19 of the Mental Patients Protection Act (chapter P-41), request the psychiatric examination of a person who refuses to undergo such examination if he has obtained from a physician a certificate attesting that the person is afflicted with mental disorders, might endanger his property or that of others and that he should undergo a clinical psychiatric examination in a hospital centre.*

Only a physician entitled to practise in Québec who is not related or allied to the person concerned may issue such a certificate.

The order of the judge shall be served by the clerk of the court upon the Commission des affaires sociales established by the Act respecting the Commission des affaires sociales (chapter C-34).

1974, c. 71, s. 4; 1974, c. 39, s. 68; 1977, c. 5, s. 14.

9. *The powers of the Public Curator as curator ex officio to a mental patient shall cease pleno jure:*

(a) when the Public Curator receives a certificate from the director of professional services or a physician authorized by the director attesting, upon a written recommendation stating the reasons therefor from a psychiatrist who has examined the mental patient, that the patient is capable of administering his property;

(b) when the certificate of incapacity has been cancelled by a final judgment of the court.

1971, c. 81, s. 8; 1974, c. 71, s. 5; 1974, c. 39, s. 69; 1975, c. 64, s. 20; 1982, c. 46, s. 3.

10. *The clerk of the court that ordered the cancellation of a certificate of incapacity shall send a copy of the judgment promptly to the Public Curator:*

1971, c. 81, s. 9.

11. *The prothonotary of the Superior Court shall send, free of charge, to the Public Curator a copy of every judgment respecting a tutorship or a curatorship.*

1971, c. 81, s. 10.

12. *The Public Curator shall also be provisional administrator ex officio:*

(a) of the property of an absentee, within the meaning of article 86 of the Civil Code, until the date of receipt of a copy of a judgment appointing a curator to the absentee;

(b) of the property found on the body of an unknown person or on an unclaimed body, subject to the Act respecting the determination of the causes and circumstances of death (chapter R-0.2);

(c) of property situated in Québec whose owners or heirs are unknown or untraceable;

(d) of the proceeds of an insurance policy on the life of a person domiciled in Québec the beneficiary of which is untraceable;

(e) of sums of money intended to pay interest and to repay bonds, notes, debentures or other evidences of indebtedness except those issued or assumed by the Government when those sums of money are not claimed within three years following their maturity;

(f) of the property abandoned by a dissolved corporation, until the date of receipt of a copy of a judgment appointing a curator to such property.

1971, c. 81, s. 12; 1974, c. 71, s. 7; 1982, c. 46, s. 4; 1983, c. 41, s. 193.

13. *The Public Curator shall have the seizin of property without an owner and of that devolving to the Crown in default of heirs or by forfeiture.*

Effects deposited in the offices of the courts of criminal jurisdiction which are not claimed within one year of the final judgment or of the discontinuance of the proceedings are deemed property without an owner.

1971, c. 81, s. 13.

14. *When the Public Curator acts as curator to a succession, he shall promptly make known his capacity, by notice published once in the Gazette officielle du Québec and in a French language newspaper and an English language newspaper.*

1971, c. 81, s. 15.

15. *Whenever a court or a judge decides to appoint a provisional administrator to the property of a succession, such administrator must be the Public Curator.*

The motion requesting the appointment of such an administrator must be served upon the Attorney General, with a notice of the date of its presentation, at least ten days before such date.

Such motion must also be served upon the persons designated by the judge in the manner he prescribes.

1974, c. 71, s. 8.

16. *The Public Curator may appear before the courts.*

He may, for the purposes of Book VIII of the Code of Civil Procedure (chapter C-25), whether as plaintiff or defendant, appear before the court himself or be represented before it by a member of his staff or by any other person he authorizes in writing, except a lawyer or a claims agent.

1971, c. 81, s. 16; 1974, c. 71, s. 9.

17. *When a tutor or curator resigns, is removed, dies or is otherwise unable to act, the Public Curator or his representative may present to a judge a motion for the appointment of a new curator or, as the case may be, convoke and preside over the family council to appoint a tutor or curator, in the manner prescribed for a notary by articles 874 to 876 of the Code of Civil Procedure (chapter C-25).*

1971, c. 81, s. 17.

17.1. *The Public Curator may, according to law, enter into agreements with any government other than that of Québec, or with any agency or body of such a government, with a view to the carrying out of this Act.*

1982, c. 46, s. 5.

DIVISION IV

ADMINISTRATION OF THE PUBLIC CURATOR

18. *As soon as property is entrusted to the administration of the Public Curator, he shall, personally or through one of his functionaries designated by him for that purpose, make in each case in the presence of a witness an inventory of such property.*

1971, c. 81, s. 18.

19. *Every acceptance by the Public Curator on behalf of an incapable person under his administration of a legacy or a succession is deemed made under benefit of inventory.*

The Public Curator is exempt from all the formalities of beneficiary acceptance but he must diligently make an inventory under private writing of the assets and liabilities.

The Public Curator, like the person under his administration, is liable for the debts connected with such legacy or succession only up to the value of the property he has received.

1971, c. 81, s. 19.

20. *The Public Curator must register against every immovable entrusted to his administration a notice stating his capacity of administrator.*

The registrar is bound to inform the Public Curator of every subsequent registration.

The cancellation of such notice shall be made upon deposit of a certificate of the Public Curator attesting that he has terminated his administration of such immovable.

1971, c. 81, s. 20.

21. *The Public Curator or any person designated by him may hold an inquiry concerning the property of which he has the seizin or the administration, or which is placed under tutorship or curatorship.*

He shall have in this respect the powers and immunities conferred upon a commissioner appointed under the Act respecting public inquiry commissions (chapter C-37).

1971, c. 81, s. 21.

22. *The judge may, upon motion by the Public Curator, suspend for a period not exceeding thirty days, any judicial proceedings taken against the Public Curator or any person under his administration, to prepare the defence.*

1971, c. 81, s. 22.

23. *The Public Curator may, without judicial authorization or consultation of the family council, continue an undertaking already established, demand a partition or take part therein.*

1971, c. 81, s. 23.

24. *The Public Curator may sell by agreement or at auction, any moveable property subject to his administration and securities not listed on a recognized stock exchange, with the authorization of a judge of the Superior Court and by following the formalities set out in articles 594, 610, 611, 621, 623 and 887 of the Code of Civil Procedure (chapter C-25) or formalities more advantageous to the person under his administration and authorized by the judge.*

Nevertheless, the Public Curator may, without judicial authorization or formality,

(a) sell, through a broker and in accordance with the regulations and customs of the stock exchange, securities listed and traded on a recognized stock exchange;

(b) sell by agreement or at auction any moveable property belonging to a person under his administration the value of which does not exceed \$6 000.

Every sale shall be made by the Public Curator or by a person designated by him for that purpose.

1971, c. 81, s. 24; 1974, c. 71, s. 10; 1982, c. 46, s. 6.

25. *The Public Curator may sell, by agreement or at auction, an immoveable subject to his administration, with the sole authorization of a judge of the Superior Court, upon such conditions as the judge determines.*

Nevertheless, the Public Curator may, without judicial authorization, sell by agreement any immoveable the assessment of which for municipal purposes does not exceed \$10 000.

To determine the value of an immoveable, for the purposes of this section, the value entered on the assessment roll of the municipality is multiplied by the factor established for that roll by the Minister of Municipal Affairs under the Act respecting municipal taxation (chapter F-2.1).

1971, c. 81, s. 25; 1979, c. 72, s. 330; 1982, c. 46, s. 7.

25.1. *The acquisition, by a member of the personnel of the Public Curator, of property subject to his administration is subject to the restrictions provided in the Civil Code on the acquisition, by curators, of the property subject to their administration.*

1982, c. 46, s. 8.

26. *The Public Curator shall not transact except with the authorization of a judge of the Superior Court; nevertheless, he may transact without judicial authorization when the value of the property which is the object of the transaction does not exceed \$2 500.*

1971, c. 81, s. 26; 1974, c. 71, s. 11; 1982, c. 46, s. 9.

27. *The property of which the administration is entrusted to the Public Curator must not be commingled with that of the public domain.*

1971, c. 81, s. 27.

28. *The property of each person under the administration of the Public Curator shall be administered and accounted for separately.*

However, the Public Curator may constitute a single portfolio from the available moneys of the persons under his administration.

The value of the share of each person under the Public Curator's jurisdiction in such portfolio shall be computed, in capital and interest, at least twice each year and entered in his account.

1971, c. 81, s. 28.

28.1. *Where the owners or heirs of property to which the Public Curator is the administrator are unknown or untraceable or have renounced it, the sums of money, exclusive of interest yielded thereby, derived from the property must be remitted to the Minister ten years after the termination of the administration of the property or upon the renunciation.*

The Minister shall pay the sums into the consolidated revenue fund after notice published in the Gazette officielle du Québec as determined by regulation.

1982, c. 46, s. 10.

29. *The Public Curator may borrow, on the security of the property included in the patrimony he administers, the sums necessary to maintain an immovable in good repair and to discharge the encumbrances affecting it.*

1971, c. 81, s. 29.

30. *The Public Curator may charge interest at the rate determined by regulation on any loan made to a person under his administration.*

1971, c. 81, s. 30.

31. *In addition to the duties imposed on the curator and tutor by the Civil Code, they must send to the Public Curator, within the delays determined by regulation, a copy of the inventory of the property entrusted to their administration, an annual report of their administration for the preceding fiscal year or part of such year and a copy of their accounts rendered.*

1971, c. 81, s. 31; 1974, c. 71, s. 12.

32. *The Public Curator may, upon motion and without consulting the family council, demand the removal of a tutor or curator on the grounds set out in the Civil Code or for contravention of section 31, or where the annual report of a tutor or curator or the inquiry held under section 21 gives serious cause to believe the property under tutorship or curatorship may be dissipated.*

Upon removal or, if the court so orders, upon the demand for removal, and until the appointment of a new tutor or curator, the Public Curator shall, ex officio, act as tutor or curator.

He shall have, over the person and the property of the incapable person or, if a tutor or curator to the person is appointed, over the property only, the powers and obligations of a tutor; however, he shall not have the custody of the person.

1971, c. 81, s. 32; 1974, c. 71, s. 13; 1982, c. 46, s. 11.

32.1. *Where curatorship is referred to the Public Curator by a judge or a prothonotary, the Curator has, in respect of the person and the property concerned, the powers and obligations of a tutor; however, he does not have custody of the person.*

1982, c. 46, s. 12.

33. *When a person under his administration dies, the Public Curator shall continue his administration until the succession is accepted.*

1971, c. 81, s. 33.

34. *During his administration, the Public Curator must, once each year, at the request of the person under his administration or of his family, render a summary account of his administration.*

1971, c. 81, s. 34.

35. *The administration of the Public Curator shall cease pleno jure when, in addition to the cases contemplated in section 9:*

(a) a judgment appointing a tutor, curator or judicial adviser to a person under his administration is served upon him;

(b) an heir, until then unknown or untraceable, appears and establishes his quality;

(c) an absentee returns;

(d) the Crown takes possession;

(e) the beneficiary of an insurance policy, until then untraceable, appears and establishes his quality.

1971, c. 81, s. 35.

36. *The Public Curator shall in each case account for his administration when it terminates.*

1971, c. 81, s. 36.

36.1. *The Government, on the recommendation of the Minister of Finance, shall appoint a committee to advise the Public Curator on investment of the property under his administration.*

1982, c. 46, s. 13.

36.2. *The members of the committee are appointed for a term of not over three years. At the expiry of their term, they remain in office until they are reappointed or replaced.*

1982, c. 46, s. 13.

36.3. *The members of the committee receive no remuneration. However, they are entitled to reimbursement of justifiable expenses incurred in the discharge of their duties, and receive an attendance allowance fixed by the Government.*

1982, c. 46, s. 13.

36.4. *The Public Curator must make a report of his investment portfolio to the committee at least four times a year.*

1982, c. 46, s. 13.

DIVISION V

FINANCING

1982, c. 46, s. 14.

37. *The fiscal period of the Public Curator ends on 31 December every year.*

1971, c. 81, s. 37; 1974, c. 71, s. 14; 1982, c. 46, s. 14.

38. *Every year, on the date prescribed by the Minister of Finance, the Public Curator shall transmit to him his budget estimates for the next fiscal period.*

The budget estimates are subject to approval by the Conseil du trésor.

1971, c. 81, s. 38; 1982, c. 46, s. 14.

38.1. *Every contract that may be charged to the budget of the Public Curator is subject to the regulations contemplated in section 49 of the Financial Administration Act (chapter A-6).*

1982, c. 46, s. 14.

38.2. *The Public Curator is entitled to exact reimbursement of his expenses and payment of the fees fixed by regulation for the administration of property entrusted to him or the supervision of property placed under tutorship or curatorship.*

1982, c. 46, s. 14.

38.3. *Any excess of income over expenditures for a fiscal period is paid into the consolidated revenue fund.*

Any operating deficit is charged against the fund constituted by the income derived from the sums referred to in section 28.1.

1982, c. 46, s. 14.

DIVISION VI

REGULATIONS AND REPORTS

39. *The Government may make regulations for the carrying out of this act, and in particular:*

(a) to determine the form and tenor of the various forms required;

(b) to determine what documents and information the director of professional services or a physician authorized by him must furnish to the Public Curator under section 6;

(c) to establish the manner in which copies of the judgments contemplated in sections 10 and 11 are to be sent;

(d) to determine the form and tenor of the annual report which a tutor or curator must send to the Public Curator;

(e) to fix the tariff of fees which the Public Curator may charge for the administration of the property entrusted to him or which is under his supervision;

(e.1) to determine the income of the Public Curator in addition to that otherwise provided for by this Act;

(e.2) to fix the date from which certain income fixed in accordance with paragraph e.1 will be added to the other income of the Public Curator;

(f) to determine what information the Public Curator may require to establish those cases in which he becomes provisional administrator ex officio under paragraphs a, c, d, e and f of section 12 or under article 686 of the Civil Code;

(g) to determine the form and tenor of the inventory to be made by the Public Curator under sections 18 and 19;

(h) to determine the terms and conditions of the registration contemplated in section 20;

(h.1) to define the expression “after the termination of the administration of the property” contained in section 28.1;

(i) to establish in what cases the financial statements of a tutor or curator must be audited and certified by a public accountant;

(j) to establish the delay within which a tutor or curator must send the documents provided for in section 31;

(k) to determine the kind of information the Public Curator may require to establish sufficient evidence of the acceptance of a succession contemplated in section 33;

(l) to determine the form and content of the account that must be rendered by the Public Curator pursuant to sections 34 and 36.

1971, c. 81, s. 39; 1972, c. 68, s. 12; 1974, c. 71, s. 15; 1974, c. 39, s. 70; 1975, c. 64, s. 21; 1982, c. 46, s. 15.

40. *The Public Curator must, not later than the 30th of June each year, make a report to the Minister of Finance of his administration for his preceding fiscal year.*

The Minister shall lay such report before the National Assembly within thirty days of receiving it if it is in session, or if not, within ten days of the opening of the next session.

1971, c. 81, s. 40.

DIVISION VII

OFFENCES

41. *Every holder of moneys intended to repay bonds, debentures or other similar loans which have not been claimed within three year from maturity, every insurer who has issued an insurance policy the beneficiary of which is untraceable and every person in possession of such a policy must immediately make a declaration to that effect to the Public Curator.*

1971, c. 81, s. 41; 1974, c. 71, s. 16.

42. *Every person who, without legitimate excuse, does not comply with section 41 is guilty of an offence and liable to a fine of not more than \$1 150 in each case, in addition to costs.*

1971, c. 81, s. 42; 1982, c. 46, s. 16; 1986, c. 58, s. 31.

42.1. *Every tutor or curator who contravenes section 31 or the regulations thereunder is guilty of an offence and liable, in addition to costs, to a fine of not over \$1 150.*

1982, c. 46, s. 17; 1986, c. 58, s. 32.

42.2. *Proceedings under this Act are instituted in accordance with the Summary Convictions Act (chapter P-15) by the Attorney General or a person generally or specially authorized by him for that purpose.*

1982, c. 46, s. 17.

DIVISION VIII

FINAL PROVISIONS

43. *The Minister of Finance shall have charge of the application of this Act.*

1971, c. 81, s. 48.



The Minister of Justice exercises the functions of the Minister of Finance with respect to the application of this Act. O.C. 1186-86 of 86.08.06, (1986) 118 G.O. 2 (French), 3615.

44. *(This section ceased to have effect on 17 April 1987).*

1982, c. 21, s. 1; U. K., 1982, c. 11, Sch. B, Part I, s. 33.

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 81 of the statutes of 1971, in force on 31 December 1977, is repealed, except sections 43 and 49, effective from the coming into force of chapter C-80 of the Revised Statutes.