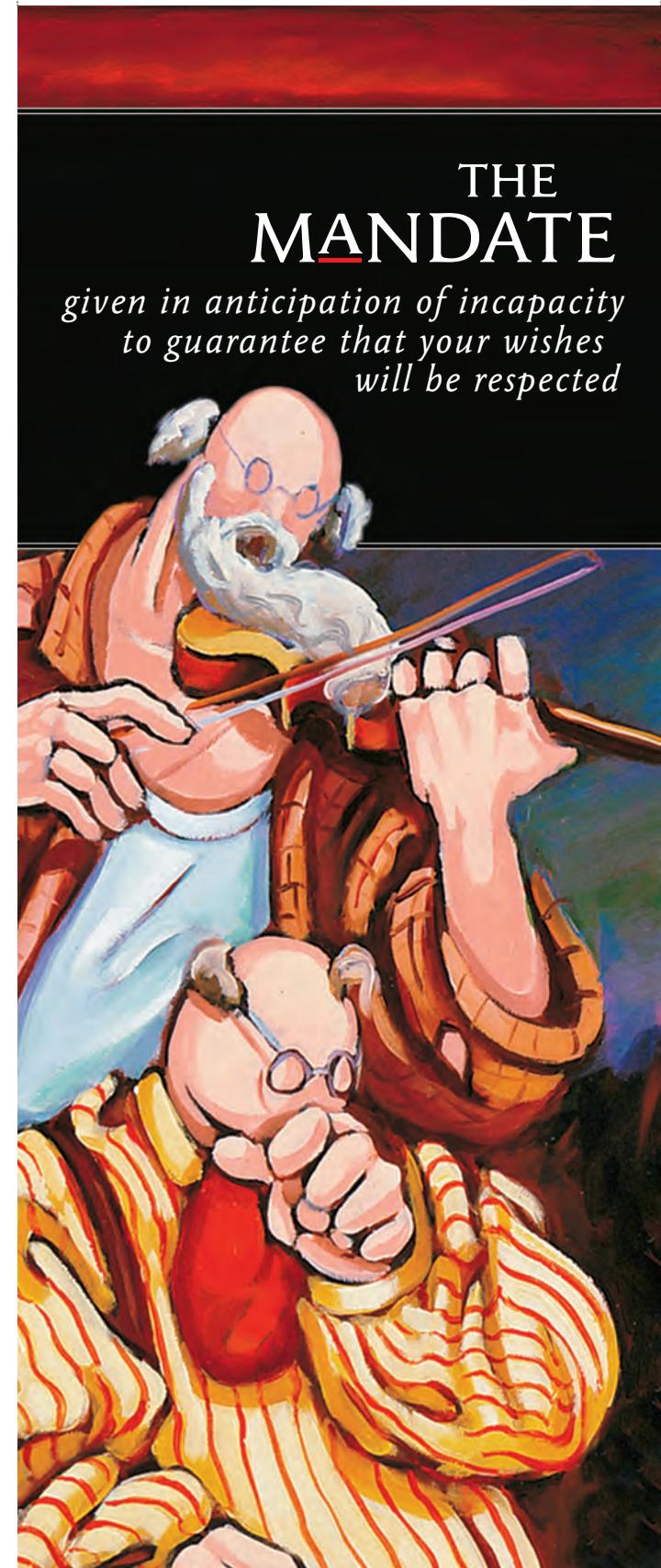




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*The Notary and Daily Life  
Details*



Registers of Testamentary Dispositions and of  
Mandates Given in Anticipation of Incapacity  
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**Consult your notary: he leaves nothing to chance.**



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*It can HAPPEN to anyone*

*The prospect of losing the ability to decide for oneself  
is not a pleasant one. Yet, none of us can be sure of being spared  
a serious accident or disease which might deprive us  
of our mental faculties. Should this calamity befall you,  
who would look after you and your belongings?*

## PAYING YOUR RENT, RUNNING ERRANDS, MAKING A DENTAL APPOINTMENT...

For independent, lucid and healthy people who manage their own affairs, it is hard to imagine they might one day be incapable of carrying out routine tasks. And yet...

### PROTECTIVE SUPERVISION

The court may, on a motion, institute or review protective supervision.

An application for the institution or review of protective supervision may also be submitted to a notary who has been specially certified by his professional order. The notary will follow the procedure established by law, draw up notarial minutes of operations and conclusions and deposit an authentic copy at the office of the court. The conclusions set out in the minutes must be confirmed by judgment.

The type of protective supervision determines the nature and scope of the moral and material protection provided to the incapable person of full age. A person is appointed to represent or assist that person. Depending on the degree of incapacity, protective supervision may be in the form of a curatorship, tutorship or advisership. Whatever the nature of the supervision, it must be periodically reviewed according to law.

Do you know who would be appointed to represent or assist you? What type of protective supervision would be instituted? Wouldn't you rather decide for yourself?

### MANDATE GIVEN IN ANTICIPATION OF INCAPACITY

Nowadays, people can personally determine who will take care of them and their belongings should they become incapacitated. The law allows any person of sound mind, the mandator, to appoint, in a document called "mandate in anticipation of incapacity", the person who will ensure his well-being and the administration of his property and assets in the case of incapacity. The person entrusted with this task is known as the "mandatary".

It is a great relief to know that a trustworthy, freely chosen person, such as one's own spouse, brother, sister or close friend, will then be legally empowered to make vital decisions.

### WHAT IS THE PROCEDURE?

To be truly effective, the mandate must be as complete and unambiguous as possible, give wide-ranging power to the mandatary and provide for the mandatary's replacement should the latter resign, become incapable of acting, or die. If you wish, you may even choose two different persons, one to ensure your well-being and the other to take care of your property. The mandate may even include certain "living will" provisions or provisions to ensure the gift of bodily organs, etc.

Ideally, the mandate should be drawn up before a notary. This enables the mandator to obtain complete information and advice from a legal authority concerning the usefulness and consequences of a mandate, when and how it comes into force, and so on. The mandate may also take the form of a simple contract, signed under private signature before two disinterested witnesses. The witnesses must also be in a position to assess the capacity of the mandator at the time of signing.

However, a notarial mandate provides greater security because it is difficult to contest. The notary ensures that the person who signs the mandate understands its scope and significance and is in full command of his faculties. Mandators and mandataries may obtain as many copies as they need, since the original is kept for safekeeping by the notary in whose presence it was signed.

### THE REGISTER OF MANDATES GIVEN IN ANTICIPATION OF INCAPACITY: MORE PROTECTION

Quebec notaries have access to a centralized registration system to ensure that all mandates are easily traced, thus guaranteeing that your wishes will be respected. Once you have signed your mandate before a notary, he will see that it is entered in the Register of Mandates Given in Anticipation of Incapacity kept by the Chambre des notaires du Québec.

This system offers the following advantages:

- Any notarial mandate can be located
- Your last notarial mandate can be identified
- The risk, following incapacity, of a mandate's being disregarded or belatedly traced is eliminated

### WHAT HAPPENS IF YOU CHANGE YOUR MIND?

Situations can change over time. The person chosen while the mandator was a young adult may not be considered suitable in later years. It is comforting to know that any mandate may be revoked and another one drawn up at any time.

### EXECUTION OF THE MANDATE

If you become incapacitated, your mandatary must ensure that the mandate becomes fully effective. This means proving your incapacity by means of a medical, psychological and social assessment, and establishing that your consent to the mandate is valid. The mandatary may do this by applying directly to the court for homologation of the mandate or, more simply, by presenting an application to a notary who has been specially certified by his professional order.

The notary will follow the procedure established by law, draw up the minutes of notarial operations and conclusions, and file the authenticated documents at the office of the court. The conclusions of the minutes must be confirmed by the court. Only after the mandatary has obtained a judgment of homologation or a judgment confirming the notarial minutes will he be able to assume the role of mandatary and become your legal protector and representative. As soon as the mandate has been homologated by the court, the mandatary becomes your legal protector and representative.

The mandate ceases to have effect when the court ascertains that the mandator has again become capable.

### DUTIES OF THE MANDATARY

The mandatary takes on very important duties and responsibilities, which may include giving or withholding consent to health-care procedures and medical treatment. He may:

- Accept or refuse treatment for you
- Accept or refuse surgery for you
- Etc.

He will also administer your property, which means:

- Looking after your investments
- Paying your bills
- Collecting your income
- Filing your tax returns
- Etc.

He must also look after your physical well-being, by:

- Buying your clothes
- Seeing to your recreational activities
- Etc.

The mandatary may not resign until a satisfactory replacement mandatary has been found (if the mandate provides for the possibility of replacing a resigning mandatary by someone else) or until protective supervision has been applied for. He must also render an account of his administration.

### WHO BENEFITS?

New lifestyles, the emergence of reconstituted families, longer life expectancy, and the estrangement of family members are some of the arguments in favour of appointing, in advance, a mandatary in anticipation of incapacity.

Although the opportunity presents advantages for everyone, those who stand to benefit the most are:

- *De facto* spouses
- Couples separated but not legally divorced
- People who have little or no contact with other members of their families
- People engaged in business
- Etc.

### CONSENT OF ORGAN AND TISSUE DONATION

Making out your mandate is the ideal occasion for considering donating your organs and bodily tissues upon death. If you agree to make an organ and tissue donation, or if you choose not to, after discussing the matter in a free and enlightened manner with your notary will be able to include this in your mandate. Thereafter, such a document of consent or refusal will be registered with the *Registre des consentements au don d'organes et de tissus* of the Chambre des notaires du Québec. It is through this Register that authorized medical staff, with the highest degree of confidentiality, will be able to verify whether a potential donor has consented to organ and tissue donation.

The *Registre des consentements au don d'organes et de tissus* of the Chambre des notaires du Québec is an effective tool to ensure your wishes are respected in the event of your death.

**Do not delay: the mandate in anticipation of incapacity is your guarantee of peace of mind.**