

# THE ADVISOR

## Legal Issues of General Interest to Individuals

### THE PERSONAL DIRECTIVES ACT

On December 1, 1997, the *Personal Directives Act* (the "Act") was proclaimed into force. As a result, Albertans are now entitled to provide written direction to doctors, personal care professionals, friends, and family members about their wishes in the event they become incapable of making their own decisions regarding personal matters, including health care (a "personal directive"). In particular, the Act allows individuals (called "donors") to make certain decisions in advance, including the following:

- ◆ Appointing someone (called the "agent") to make health care and other decisions regarding personal matters on the donor's behalf;
- ◆ Providing information about the donor's personal beliefs and values which an agent, caregiver or personal service provider should consider in making decisions for the donor; and,
- ◆ Giving instructions as to what sort of health care the donor would consent to in various circumstances. This instruction may be broad and general, or it may be very specific, including an indication of medical procedures which the donor may or may not desire in specific situations.

The Act outlines specific signing requirements in order for a personal directive to be legally binding. A personal directive must be signed before a witness who may not be the donor's spouse, the agent, or the agent's spouse. A personal directive may be revoked by the donor at any time so long as the donor understands the nature and effect of revoking the personal directive. The Act also provides that the personal directive is only effective if the donor is incapable of making his or her own decisions.

The Act also creates legal responsibilities for the person designated as an agent. In particular, the agent must follow any clear instructions of the donor contained in the personal directive.

If a personal directive does not provide clear instructions, but simply appoints a person to act as agent, the agent must make decisions regarding personal matters and health care for the donor which the agent believes the donor would have made in the circumstances. These decisions must be based on the agent's knowledge of the wishes, beliefs and values of the donor. It is therefore important that a person making a personal directive discuss those wishes, beliefs and values with his or her agent in advance so the agent is able to make the appropriate decisions if and when the situation arises.

Finally, an agent is required to keep a record of all personal decisions made by the agent under a personal directive, and must maintain that record for at least two years after the agent's authority ceases.

Before proclamation of the Act, Albertans were able to make informal personal directives (often referred to as living wills) based on the common law which says physicians must consider the specific directions of an individual regarding medical treatment issues. However, physicians were not necessarily required to follow those directions, depending on the circumstances.

In addition, informal personal directives did not permit a person to appoint an agent to make personal and health care decisions on that person's behalf. The Act is much more far reaching than the common law provisions. If a person signed a personal directive before the proclamation of the Act, it will be necessary to re-execute the directive to enjoy the protection of the Act.

If you do not have a personal directive and you become unable to make personal decisions for yourself (such as where you should live, what sorts

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of activities you shall engage in, and the type of health care you should receive), it is necessary for someone to make an application under the *Dependent Adults Act* to be appointed as your guardian. Not only will this result in unnecessary legal expense to you, it will also make matters more complicated for your family members. The person appointed as your guardian will be required to apply to the court every six years to review the guardianship order, and his or her authority will be restricted by the *Dependent Adults Act* and the Court.

This article is prepared by lawyers in the Personal Services Group of Field Atkinson Perraton. It is intended to provide general information on areas of law that affect individuals. This publication is based on the law at the date of publication and is not intended to provide legal advice on any specific fact situation. Please consult a lawyer before acting on the information provided.

Our experienced professionals are happy to meet with you at your convenience to discuss your individual circumstances. If you would like more information about the *Personal Directives Act* please contact any of the following members of the Personal Services Group at Field Atkinson Perraton: **Roy D. Boettger, Q.C.**, (260-8507), **Nancy-Lynn Stevenson** (260-8518), or **Barbara J. Kimmitt** (260-8532) in Calgary or **Doug S. Murray** (423-3003) in Edmonton.