

THE ADVISOR

Legal Issues of General Interest to Individuals

TAKING CARE TO TAKE CARE OF YOURSELF

Over the past few years, the law has changed in Alberta to give Albertans a better opportunity to make financial and personal health decisions for themselves in advance of any future medical problem that may prevent them from making those decisions. The *Powers of Attorney Act* allows you to appoint someone to make financial decisions on your behalf. The *Personal Directives Act* allows you to name someone who can make decisions on your behalf for personal matters such as health care, including the ability to make specific health care decisions in contemplation of future medical disability.

Before the *Powers of Attorney Act* and the *Personal Directives Act* became law, the *Dependant Adults Act* offered the only solution to family members who were faced with the mental or physical decline of their loved ones. Today, if you do not appoint an Attorney under the *Powers of Attorney Act* or an agent under the *Personal Directives Act*, your friends or family members may be required to make an application under the *Dependent Adults Act* to be appointed your trustee and guardian in order to make decisions on your behalf.

Financial Decisions

If you become mentally unable to look after your finances, and you have not signed an

Enduring Power of Attorney, someone, usually your closest relative, must make an application to be appointed your "trustee" under the *Dependent Adults Act*. Once appointed trustee, that person must keep careful track of all amounts received and spent on your behalf. The trustee must be prepared to appear before the Court of Queen's Bench at intervals set by the Court (every two, four, six, or twelve years depending on the order of the Court) to "pass the accounts". The trustee must also attend before the Court every six years so that the Court can review the Order appointing that person as trustee and determine if the Order is still appropriate.

Health Care Decisions

Similarly, if you become mentally unable to make decisions regarding personal matters, including health care, and you have not signed a Personal Directive, someone, again usually your closest relative, must make an application to be appointed as your "guardian" under the *Dependent Adults Act*. However, even if a person is appointed as guardian, he or she may not have the same extent of authority to make medical decisions as he or she would have had under a Personal Directive. The guardian will also have to appear before the Court every six years so the Court can review the Order appointing that person as guardian to determine if the Order is still appropriate.

There are considerably more costs and added effort required to make an application to be appointed

trustee and guardian under the *Dependent Adults Act*. Appointing an Attorney under an Enduring Power of Attorney and an agent under a Personal Directive allows you to take control of your future financial and personal care. The new legislation encourages people to be in control of their own care.

Advisor 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. For further information on this topic, please contact Roy Boettger, Q.C. ((403) 260-8507), Nan Stevenson ((403) 260-8518), Barbara Kimmitt ((403) 260-8532) in Calgary or Doug Murray ((780) 423-3003 in Edmonton.

Other issues of The Advisor include:

- Buying or Selling Your Home
- Dying Without a Will
- The Personal Directives Act
- Christmas Cheer
- Real Estate
- Wills

Other Firm Publications include:

- Workwise: Current Employment & Labour Law Issues
- The Entrepreneur: Legal Issues of General Interest to Owner Managed Businesses
- Defence & Indemnity: an Analysis of Insurance Case Law and Legislation

If you would like to receive copies of past articles or be placed on our mailing list, please contact Judy Yeats at 260-8502. You may also wish to check our website at <http://www.fieldlaw.com>