

## Thoughts on Personal Directives

Statistics Canada announced recently that life expectancy in Canada now exceeds 80 years. But while we are living longer, we may not always be living well. According to the Alzheimer's Society of Canada, the number of Canadians presently suffering from Alzheimer's or a related disease is about 450,000. An estimated 97,000 people will develop Alzheimer's or a related disease in 2008, and the number of new cases annually is expected to rise to 111,430 by 2011. The incidence of Alzheimer's or a related disease among Canadians over the age of 85 is 1 in 3. Over one-third of Canadians know someone who suffers from Alzheimer's, and nearly one-fifth of Canadians have someone suffering from Alzheimer's in their family.

Why then, I wonder, do so few people have a personal directive?

A personal directive is a legal document an individual can use to appoint someone to make personal decisions for them when they are incapable of making decisions themselves, whether as a result of medical trauma or mental disease. A personal directive is unlike a will (which takes effect only at death) and it is unlike an enduring power of attorney (which deals only with money and property). Personal directives deal with decisions that are personal in nature, such as where you will live and with whom you will associate. Personal directives can also deal with medical consents and end of life decisions.

Personal directives are normally prepared by lawyers as part of standard estate planning services, but only since the mid-90's, when the *Personal Directives Act* was brought into force in Alberta. Prior to that time, there was no means by which an individual could appoint another to make these important decisions for them. If your estate planning documents were prepared prior to that time, chances are you do not have a personal directive.

Personal directives are activated by an individual's incapacity. A physician or psychologist needs only to confirm that the individual lacks the capacity to make personal decisions. This is quite in contrast to the process required to have a person declared incompetent under the *Dependent Adults Act* where an application must be made to the Court for an order. The application process is quite cumbersome, time consuming, and of course, expensive. It can also be incredibly divisive to the family if there is a disagreement among family members as to who will make decisions for the ailing parent. I've witnessed a few of these battles first hand. They are not pleasant and they are not cheap. Legal fees in contested guardianship applications can easily run into the thousands of dollars. Many of these disputes could probably have been avoided if the person in question (usually the parent) had made their wishes known in advance through a personal directive.

Personal directives are not just for the elderly. Any of us could at any time suffer an injury in an accident that renders us incapable of making personal decisions, whether temporarily or permanently. True, the odds are against that happening, but why take the chance? Personal directives are easy enough to make and they are not that expensive. If you would trust your spouse, your partner, your sibling or child to make the decisions that need to be made if and when the time comes, you should say so in a personal directive. Don't assume that when the time comes, everything will just work itself out. In my view, that is doing a disservice to your family members. Do your family a great favor, and make your wishes known through a properly drawn personal directive.