

ARE YOU LOOKING AFTER YOURSELF (APART FROM WEARING MASKS AND SOCIAL DISTANCING)?

Oct 23, 2020

At this difficult time, with all of us isolated for so long and the constant threat of contracting COVID-19 ever present, the members of the Aird & Berlis Estates and Trusts Group are contacted daily by existing clients, as well as new ones.

Many people are soberly reflecting on their own circumstances. Fearful of being exposed to infection, illness and, from the statistics forced upon us daily, death, there is a great deal of internalizing about what would happen to their family if they were stricken.

We are sure that many of our readers will want to ensure their planning is up-to-date. For our readers who are advisors, it is important to ensure that your clients' planning is also up-to-date. To that end, we have produced a weekly series of Alerts which will provide basic information in response to questions we are frequently asked.

Last week we provided a wrap up of our Alerts.

Our first Alert, dealing with what may occur if you do not have a Power of Attorney for Personal Care, created some confusion.

Accordingly, we have amended it and below is its replacement:

The Importance of Having a Power of Attorney For Personal Care

If you become incapable of making personal care decisions, sometimes costly and delaying steps will have to be taken to permit you to be looked after properly.

It may be necessary to make an application to the Court to appoint a "Guardian of the Person", requiring some ongoing supervision by the Court and substantial costs.

Even if it is considered unnecessary to have a Guardian of the Person appointed, someone may have to either give or refuse consent with respect to health-related treatments, and that person has to ensure that they are carried out.

The person making those decisions - and many others - may very well be the last person you would have wanted.

The law specifies, in a list of priorities, who that person will be. The right to assume those responsibilities is in the following order:

- A spouse or partner, then
- A child or parent (if the parent has no restrictions in dealing with the incapable person), then
- A parent who, legally, only has a right of access to the incapable person, then
- A brother or sister, then

- Any other relative
- If none of the foregoing are available, willing and able to act, the Public Guardian and Trustee (a Provincial office)

Among the many issues, there could be a necessary decision as to whether you should be in a long-term care home, or what is known in legislation as a “care facility” (despite, perhaps, never wanting to be removed from your home).

Also, it is likely that consent may have to be given, or refused, relating to what medical treatment, including surgery, is recommended by health practitioners. (If there is an emergency, those health practitioners can make those decisions, even if an Attorney for Personal Care has been appointed.)

The examples above highlight the importance of completing a Power of Attorney for Personal Care while you are capable of doing so.

If you have any questions that you would like us to address in future issues, please contact a member of our Estates & Trusts Group.

This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.