

## ***Explanation of Statement of Wishes Regarding End of Life***

*Prepared by the DeRusha Law*

### **The Current State of the Law**

In Canada, currently, it is acceptable and legal, in some circumstances, for a person to request that because of their illness, or situation, that a doctor assist them in ending their life. However, the person who is giving these instructions to the doctor must be consenting at the moment the instructions are given, that is up to the last moment when the act is completed, and they must be “competent.”

### **The Problem of Incompetency**

Competency is when a person is understanding, alert, and able to analyze the impact of the instructions that they are giving. The question arises, can a person who is not competent, because perhaps they are unconscious, or in a coma, or have dementia, or such other factors that leads one to conclude that they are not confident, have their attorney for personal care instruct a doctor to bring an end to their life?

The answer is unclear. This is because the law changes as arguments are presented, and in specific situations. There is also the Charter of Rights, which is a document that applies to the laws and decides whether a law is consistent, or inconsistent with the Charter. If a law is not consistent with the Charter, it may be struck down, and thus not apply.

If the power of attorney for personal care was able to assess the situation, and conclude that the criteria for which the individual gave him or her the power of attorney have been met, perhaps that person could, in those circumstances, instruct the doctor to bring the person’s life to an end. Where the factual problem arises, is determining whether the situation has come into existence that the ill person has fallen into the category in which the ill person has said that they want the power of attorney to ask the doctor to bring their life to an end. If the person, in advance of becoming incompetent, set out specific and detailed criteria, then a court could first assess whether the person has reached that criteria. That is why a *Statement of Wishes Regarding the End of My Life* could become a very important document.

Thus, a person may wish to give those instructions, so that the situation could be covered. It may also come to pass that the law changes, or others present this similar type of Charter Argument, so that it is clear that if specific criteria are set out, and the person meets those criteria, then a doctor would not be charged with any offence for having brought that person’s life to an end.

### **Details of the Statement of My Wishes regarding the End of My Life**

This would be a document that would give guidance to a Power of Attorney for Personal Care, as to when they may ask a doctor to assist in the bringing about of the end of life.

In terms of bringing about the end of life, there can be various positions on the continuum. For example, if a person is unable to consume any nutrition, and the nutrition is no longer given, then they will pass away. The other extreme is when the doctor actually provides medication that brings about the end of life, which can occur but only in circumstances where the person, at that very moment time, is “*consenting and consistent*” in their position that this is what they want the doctor to do.

Having a detailed statement as to the circumstances in which the Power of Attorney for Personal Care could make decisions that relate to the process of bringing about the end of life, perhaps by withholding certain types of treatment or other aspects, would need to be very clear in its description.

DeRusha Law has been preparing wills and other related documents for over 20 years, and is familiar with the types of documents that could be used in these circumstances.