

TAKING THE RIGHTS AND OPPORTUNITIES YOU HAVE NOW MORE SERIOUSLY

Anyone planning their financial future and setting their financial and estate planning goals has a lot to consider. Members of the lesbian, gay, bisexual, transgender or queer (LGBTQ) community may face additional challenges that make careful planning even more important.

➔ On the path toward equality

It has taken couples in the LGBTQ community many years to achieve the rights and opportunities they now have in Canada. Ontario became the first Canadian province to recognize same-sex marriages in 2003. Many other provinces soon followed suit. The passing of the Canadian government's Bill C-38 (the Civil Marriage Act) in 2005 gave married same-sex partners many of the same legal rights as other married couples.¹ Before these important milestones were reached, many legal battles were fought across the country, paving the way for LGBTQ couples to earn the same rights and opportunities that heterosexual couples have long enjoyed. In addition to the right to marry, equality under Canada's taxation rules was granted in 2001 when the definition of common-law partner was updated to include a same-sex partner.² This significant change gave LGBTQ couples the same tax benefits as heterosexual couples, and these benefits can be used to reduce tax costs and to make tax-efficient retirement and estate plans.

Even today, full equality has not yet been realized in Canada. Some legislation still puts unmarried same-sex couples at a disadvantage when it comes to certain estate planning issues.

👤 Population on the rise

The most recent census, conducted in 2011, showed a large increase in the number of same-sex couples in Canada.³ In 2011, nearly 65,000 same-sex couples (0.8% of the couples population) were reported. This is almost double the number of same-sex couples reported in the census 10 years earlier.

Same-sex couples tend to live in the largest cities, with almost half (45.6%) living in Toronto, Montreal and Vancouver. In contrast, only one-third (33.4%) of opposite-sex couples live in these three metropolitan areas. Since the right to marry was granted in 2005, the number of married same-sex couples has grown to more than 21,000. This represents about one-third of the same-sex couples reported in the 2011 census.

👥 Family acceptance

The struggle for equality is not limited to the courtroom. Many members of the LGBTQ community find that the treatment received within their own families is less than equitable.

Parents sometimes feel a loss when they learn their child is coming out. This sense of loss is often rooted in how parents see their own identity and future goals relating to those of their son or daughter.⁴ The conversation in the right sidebar illustrates a typical scenario that may play out in the family of an LGBTQ child.

Every child expects a supportive atmosphere within their own family. Unfortunately, parents or other family members may be judgemental and

Family Acceptance

"That wasn't a good phone call. My mother just asked me if I could help my older brother out financially again. This time with the cost of the renovation on his house so that his twins could each get their own bedrooms. I mean, we have money

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unsupportive, at least initially. This is one reason why many in the LGBTQ community choose to keep their status private. One US study asked members of the LGBTQ community how “out” they were. Only 64% of the respondents indicated that they were fully out, and 28% stated that they were mostly out. The remaining 8% indicated that they were not out at all.⁵

Opening a line of communication early with family members is important. It may be difficult to start that conversation when some other situation arises, such as a need for financial assistance.⁶ Often this can be made possible by enlisting the help of a more open person of the parents’ generation.

Affluence in the community

Compared to the population at large, the LGBTQ community has a higher income. Statistics from the United States show that household incomes are more than 20% higher than the average American family (\$61,500 vs. \$50,000). This difference is perhaps not so surprising as LGBTQ couples tend to live in the largest cities, where incomes are above average.⁷ This higher level of income, combined with the fact that same-sex couples are far less likely to have children than opposite-sex couples (9.4% vs. 47.2%),⁸ can make more discretionary income available to spend today and to save for future goals. It is wrong to assume that the goals of same-sex couples are different than those of opposite-sex couples. They are very similar, and LGBTQ couples face the same challenges achieving them. In other words, the “what” that same-sex couples want to achieve for their future is no different, but at times the “how” requires some extra customization.

Changes in Old Age Security and the Canada Pension Plan

Old Age Security (OAS) has been in existence since 1927 and the Canada Pension Plan (CPP) since 1966, yet it was only in 2000 that both the benefits and obligations of these two income support programs were extended to same-sex, common-law couples.⁹ Included in these changes was the availability of survivor benefits for common-law partners of deceased individuals. These programs are important income components for retirement planning.

Additionally, as long as both partners are over the age of 60 and are receiving CPP payments, it is now possible to share a portion of CPP benefits, proportional to the time spent together. This CPP sharing provides an income-splitting benefit that can lower overall income taxes for the couple. Sharing of pension credits following a separation is also possible. However, for same-sex couples this potential sharing of CPP is limited, applying only to same-sex partners that separated on or after July 31, 2000.¹⁰

Changes in pensions

Pension plans are a very important source of retirement income for those fortunate to have been members of plans provided by public or private sector employers during their working years. Spouses of plan members often enjoy a number of benefits, such as a survivor pension and the ability to split a pension after the dissolution of a relationship.

As with the right to marry and the tax law changes to recognize same-sex relationships, it was only recently that Ontario modernized its pension

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put aside, but we’re looking at buying our own home after our wedding later this year. She just doesn’t understand.” ...

...“At what point will your mom realize that we have been in a serious relationship for more than 10 years and that we are not able to finance your brother’s lifestyle any longer? We have goals, plans and dreams too. I hope that she didn’t mention leaving everything to your brother in the will again too.”

legislation to amend the definition of the term *spouse*.¹¹ In 2005, the new terminology gave same-sex spouses the same rights as those enjoyed by opposite-sex spouses. It is important to note that the definition of the term spouse varies according to the specific legislation. For example, in pension plans governed by Ontario legislation, couples are considered to be spouses if they are married, have been living together in a conjugal relationship continuously for at least three years, or are the natural or adoptive parents of a child. However, for tax purposes the cohabitation period required is only one year.

Legislation in British Columbia and several other provinces provides same-sex couples with the same rights to spousal pension benefits as opposite-sex couples, including the ability to name a same-sex partner as the beneficiary of a pension.¹²

➔ Changes in employment benefits

Many large companies have instituted policies that prohibit discrimination on the basis of sexual orientation. In fact, a large proportion (88%) of Fortune 500 companies, many of which operate in Canada, have such policies. However, only 62% of Fortune 500 companies provide domestic partner health insurance benefits to their employees.¹³

➔ Changes in taxes

With equality granted for all Canadian tax purposes in 2001, the ability to save and defer taxes as part of both a financial plan and an estate plan became available to same-sex couples. Income-splitting strategies such as the use of spousal RRSPs, prescribed-rate loans between spouses, pension income splitting, and the transfer of certain tax credits between spouses provide excellent opportunities to reduce the overall tax bill a couple faces. Naming of a spouse or common-law partner as a beneficiary provides a mechanism for tax-deferred rollover or transfer of RRSPs, RRIFs and TFSAs to a surviving spouse after the death of the holder.

Making investment or bank accounts joint with right of survivorship will also facilitate the tax-deferred transfer of these assets upon the death of either spouse.

➔ Wills

When it comes to estate planning, the seamless equality for same-sex couples found in tax rules is not reflected in provincial legislation. A person who dies without a Will in place is considered to be intestate. Unfortunately, intestacy rules in several provinces do not provide for same-sex partners, or for common-law partners in general. Instead, assets go to the closest blood relationships – such as parents, children or siblings – requiring a common-law partner to fight using other provincial legislation for a share of assets or for financial support. This can be especially difficult if family members of the deceased partner did not support the same-sex relationship. For this reason, having a properly worded Will can help to financially protect a surviving same-sex or common-law spouse.

➔ Powers of attorney

When Wills are drafted or updated, it is also important to set up powers of attorney (POAs) to protect both spouses. This will allow your trusted partner to take care of your finances and your health-care decisions should you become

Whether married or common-law, same-sex Canadian couples who travel could face a formidable challenge as a result of a conflict of laws. There are many jurisdictions around the world which do not yet recognize same-sex unions, whether by marriage or common-law. This means that a same-sex couple residing in or visiting such a jurisdiction face an uncertain outcome with respect to rights and obligations from any event that engages local laws, such as hospitalization, illness or injury, criminal activity, death, separation or divorce.

unable to do so yourself. If POAs are set up as enduring POAs through the use of specific wording in the documents, your choices and decisions will be carried out even if the partner who is granted the POAs becomes incapacitated.

Insurance considerations

An important aim of any financial or estate plan is to ensure that adequate financial resources are available to help meet the needs of both you and your partner. Life insurance can be updated to ensure that same-sex partners are named as beneficiaries, helping to provide sufficient funds when needed.

Health insurance in the form of disability, critical illness, and long-term care insurance should also be considered. Long-term care insurance is especially important as assisted care facilities may not be supportive of same-sex relationships.¹⁴ To avoid the potential for discrimination based on sexual orientation at traditional long-term care facilities, there is a need to build sufficient savings into your financial plan, or to consider funding a long-term care insurance policy.

Conclusion

As a married or common-law couple you can benefit from the legislative changes in Canada concerning same-sex relationships. It's essential to have an estate plan, prepare or update Wills and powers of attorney, and review your insurance needs. Updating beneficiary designations will help to ensure the needs of your partner are met, and the transition of assets according to your wishes. Feeling confident about the future comes from knowing where you stand now and how to get where you want to be. A customized financial plan can put you on the right path.

To reduce the risk of encountering difficulties when abroad, it is critical that valid Wills, powers of attorney for property and for personal care, deeds reflecting ownership of real estate, proper documentation reflecting current ownership of other property, and documentation reflecting legal custody of children (if any) are in place prior to travelling.

¹ Timeline – Same-Sex Rights in Canada. CBC News, 2012. <http://www.cbc.ca/news/canada/timeline-same-sex-rights-in-canada-1.1147516>

² Morneau Sobeco Handbook of Canadian Pension and Benefit Plans. Bethune A. Whiston, Lois C. Gottlieb. CCH Canadian Limited, 2005: p391. http://books.google.ca/books?id=IjsyQnk-r1wC&pg=PA391&lpg=PA391&dq=ita+same+sex+canada&source=bl&ots=2sVBNQKA10&sig=mNn73zqBq1NfGnJ5C_sxiixdWwM&hl=en&sa=X&ei=R7Jsu9G0DsqsYASA-oLoDg&redir_esc=y#v=onepage&q=ita%20same%20sex%20canada&f=false

³ Portrait of Families and Living Arrangements in Canada. Statistics Canada, 2012. <http://www12.statcan.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.cfm>

⁴ When Sons and Daughters Come Out. PFLAG Canada, 2010. <http://www.pflagcanada.ca/pdfs/glb-mychild.pdf>

⁵ The LGBT Financial Experience – 2012-2013 Prudential Research Study. Prudential. https://www.prudential.com/media/managed/Prudential_LGBT_Financial_Experience.pdf

⁶ The 40-70 Rule: Helping Adult Children Communicate with their Aging Parents. BMO Financial Group, 2013. http://www.bmonesbittburns.com/IA/IAHomepage/NewsToBrowser.asp?A_ID=EDMAH&LANGUAGE=EN&NEWS_ID=39&VERSION=null

⁷ The LGBT Financial Experience – 2012-2013 Prudential Research Study. Prudential. https://www.prudential.com/media/managed/Prudential_LGBT_Financial_Experience.pdf

⁸ Portrait of Families and Living Arrangements in Canada. Statistics Canada, 2012. <http://www12.statcan.ca/census-recensement/2011/as-sa/98-312-x/98-312-x2011001-eng.cfm>

⁹ The History of Canada's Public Pensions. Canadian Museum of History. http://www.historymuseum.ca/cmhc/exhibitions/hist/pensions/cpp-timeline_e.shtml

¹⁰ How to Apply for a Canada Pension Plan Credit Split (upon Separation or Divorce). Canada Revenue Agency, 2013. [http://www.servicecanada.gc.ca/eforms/formsc/sc-isp-1901a\(2013-07-31\)e.pdf](http://www.servicecanada.gc.ca/eforms/formsc/sc-isp-1901a(2013-07-31)e.pdf)

¹¹ Ontario Pension Act Amended to Include Same-Sex Spouses. James Langton. Investment Executive, June 15, 2005. <http://www.investmentexecutive.com/-/news-29227>

¹² Gay and Lesbian Relationships. The Canadian Bar Association, British Columbia Branch, 2010. http://www.cba.org/dev/BC/public_media/family/163.aspx

¹³ LGBT Equality at the Fortune 500. The Human Rights Campaign. Site accessed May 12, 2014. <http://www.hrc.org/resources/entry/lgbt-equality-at-the-fortune-500>

¹⁴ Seniors. Egale website. Accessed May 12, 2014. <http://egale.ca/category/equal-families/seniors/>

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