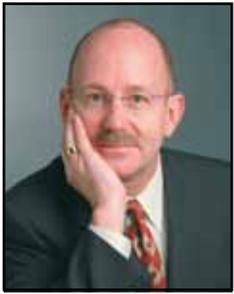


# Same sex couples, death and legal implications

Guest Editorial by Robert Coates, BSc, LLB, TEP



When Casey House was founded in 1988 as the first HIV/AIDS hospice in Canada, life was different. Same-sex couples were not recognized in any legal sense.

Couples who had been together for many years could not marry and had no rights to property, support, or rights to inherit if their partners died without making a will (intestate). Wills made leaving property to surviving same-sex spouses were often challenged by other family members.

So how does death affect gay relationships now? Well, it still depends on whether or not you are married to each other. It is only married spouses who have some rights to inheritance in the event that a deceased spouse dies intestate. Unmarried spouses still have no rights of inheritance on intestacy. Of course, properly drafted wills can be very effective to ensure that the deceased's assets are passed on to a surviving common-law or married spouse.

I remember the first time that a client came to see me in the 1980's, distraught, to advise me that his partner of many years was very ill, dying at a local hospital. The "blood relations" of the partner refused him entry to the hospital room to see his partner. This was a traumatic

experience which needed to be addressed. At the time it was not possible to draft what is now known as a Power of Attorney for Personal Care. We drafted "Living Wills" which were expressions of intention and which had no legal force or effect with respect to our medical care. We hoped that hospital staff and family members would respect these wishes. It did not always happen.

Today, with a change in the law, an unmarried same-sex partner is recognized before "blood relatives" as a designated decision maker. To be certain however, we still need to execute appropriate documentation. We need to execute Powers of Attorney for Personal Care. In such a document, which is legally enforceable, you may appoint another person or persons to make decisions regarding your medical care, health care or long term care. If you have wishes regarding your care, then you may express those wishes to the appointed decision maker who is required by law to make a decision based on the wish, even if he or she disagrees with the wish. It is only if you have expressed no wish applicable to the circumstances that the decision maker is required to make a decision based on what he or she considers to be your best interests.

Making a will and executing powers of attorney for both property and personal care should all be integral parts of your estate plan.

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