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In This Issue

<i>What Am I Going to Do?</i>	1
<i>But I'm Single</i>	2
<i>Memories are Made of This</i>	3
<i>PYC Briefs</i>	3
<i>PYC Contact Information</i>	4

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the newsletter of Prentice Yates & Clark

What Am I Going to Do?

The death of a spouse is one of life's greatest stressors. Not only do you have to deal with the physical and emotional void, you must also deal with the details of winding up an estate.

IN THE MIDST OF SUDDEN GRIEF, the banality of searching for the information needed to close the deceased's estate may be an intrusive and even offensive process. On the other hand, making the necessary phone calls may start you on your path through the stages of grief.

However the process of winding up the estate affects you, you will need to reach out for information and should call:

YOUR ACCOUNTANT

Your accountant may have information concerning investments, RRSPs, and insurance that may lead you to others you must call. You will also need your accountant's advice concerning the tax consequences of your spouse's death: the effect on the deceased's final return, and the potential impact on your own taxable liabilities. It is always advisable to discuss how the liquidation of assets, investments or government-sponsored savings vehicles, such as RRSPs or RESPs, and HBP's will impact the deceased's estate and perhaps even your own income taxes.

YOUR LAWYER

Your lawyer will probably have the original copy of the will and may even have been named executor. Your lawyer can also provide insight into your responsibility for paying any outstanding debts incurred by the deceased. The will can be expected to provide details as to where assets, insurance policies or investments are held and name contacts.

THE FUNERAL HOME

Funeral arrangements can be expensive. Make sure you know the funeral costs in detail. The funeral director may allow you to defer payment until funds are available through the executor or the estate. Ask the funeral home for copies of at least twelve certificates of death since banks, insurance companies and government agencies will require proof of death.

THE BANK

Notifying the bank of the death will freeze all accounts and access to any safety deposit box that might hold jewelry or evidence of investments. This action by the bank ensures the estate is intact for the executor and eliminates the possibility of unscrupulous individuals withdrawing funds or valuables.

THE FINANCIAL ADVISOR

The company handling the deceased's investments must be contacted. The advisor will be able to provide the portfolio, its market value at the date of death, the

adjusted cost base and whether the assets are held solely or jointly. This information will enable your tax advisor to calculate the deceased's tax liability, if any, for submission of the final return. This information is also necessary for determining any effect on the survivor's tax position.

THE DECEASED'S EMPLOYER

If the deceased was employed at the time of death, the employer will have to be notified. There may be accrued remuneration and vacation pay owing. For many, there may be insurance policies, pension plans, death benefits, that is, payments for built-up sick-leave credits owing, if the deceased had not yet retired, and payments acknowledging the deceased's service. You will also want to determine whether medical, drug and dental insurance continue for the immediate family. If the deceased had been a union member, the survivors might be entitled to union benefits.

HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA

The survivor should contact HRSDC as soon as possible after the loved one's death to claim the one-time lump sum death benefit of \$2,500 as well as the survivor's pension and children's benefits. The survivor's pension is based on the deceased's contribution to the CPP. The monthly children's benefit for all children under the age of 18 continues while the children attend school full time.

A low-income survivor between 60 and 64 may apply for an allowance based on the previous year's income. Payments traditionally start six-to-12 weeks from the date of application. Early application is suggested as there may be difficulties receiving back payments exceeding 12 months. At age 65 the allowance changes to the Old Age Security pension. Once the survivor is receiving the OAS pension, application may be made for the Guaranteed Income Supplement.

SEEK OBJECTIVE ADVICE FROM YOUR ACCOUNTANT

Emotional support and practical advice are much needed when a loved one dies. The emotional support can be garnered from family members or close friends, but it is best to speak with an independent and unbiased outsider such as your accountant for objective advice.

Your accountant can provide an informed opinion of continued on back cover ▶

But I'm Single

Living together as single people may be great but be careful. The CRA may see you as a married couple.

ONE OF THE MOST CONTENTIOUS ISSUES faced by tax preparers when completing clients' personal income tax returns is whether a couple is simply living together - or living together in a manner treated by the Canada Revenue Agency (CRA) as "married". This delicate area of personal beliefs can generate legal and income tax problems with a long-term impact on the individuals in the relationship.

The source of the problems is usually the belief by the parties in the relationship that they cannot be treated as married if they do not have a signed marriage certificate.

In Canada, it is true that there is no such thing as common-law marriage; no relationship matures into marriage merely by the passage of time, as some people believe. In Ontario, a couple must have "cohabited" for three years, which means they must satisfy certain conditions other than merely living together before they are classified as common-law spouses; periods in other provinces vary between two and three years. Cohabitation is defined by the following seven factors established in *Moldowich v Penttinen*:

1. Shelter: Was accommodation shared by the unmarried couple?
2. Sexual and Personal Behaviour: Was the relationship intimate and perceived to be so by others?
3. Services: Did the couple share the traditional functions of a family?
4. Social: Did partners present themselves as a couple to the outside world?
5. Societal: How was the couple treated by their community?
6. Economic Support: Were the unmarried parties economically interdependent?
7. Children: Did the couple see children as part of their home and interact as parents with each others' children?

HOW THE CRA SEES IT

Couples who have cohabited for more than 12 months but less than the statutory period that would establish them as common-law spouses in their province of residence are often surprised to find the CRA has categorized them as "common-law partners" and thus treats them as "married" for tax purposes. The CRA's website defines common-law partners as follows:

"A common-law partner applies to a person who is not your spouse with whom you are living in a conjugal relationship, and to whom at least one of the following situations applies. He or she:

- a) has been living with you in a conjugal relationship for at least 12 continuous months;
- b) is the parent of your child by birth or adoption; or
- c) has custody and control of your child (or had custody and control immediately before the child turned 19 years of age) and your child is wholly dependent on that person for support."

This is essentially a summary of the definition found in the Income Tax Act.

Individuals living together and wishing to establish that they are not married or living common law must establish that they are not living in a conjugal, i.e., sexual, relationship. If such a relationship has continued for 12 consecutive months (not necessarily beginning in the particular year), the CRA recognizes it as a common-law relationship. Individuals who live together for financial, physical or emotional reasons, especially if points (b) and (c) are in play but do not want to be categorized as common law for tax purposes should be aware that if the relationship becomes conjugal it would become a common-law relationship in the eyes of the CRA.

COMMON LAW CHANGES TAX STATUS

The significance of retaining "single" taxpayer status should not be dismissed lightly. Putting aside other legal issues, consider the following tax issues, both positive and negative, regarding common-law relationships for tax purposes:

- A single parent can claim child care expenses. In a common-law relationship the person with the lower income must claim child care expenses.
- A single parent can claim equivalent to spouse for their child. In a common-law relationship this is not possible.
- A common-law couple can only have one principal residence per family unit. Thus, if each individual owns a residence before union, one of the principal residences could incur tax on capital gains when one of the properties is sold.
- RRSP contributions may be made by one person for the benefit of another in a common-law relationship; the contributor is allowed the tax deduction. The same would not be true for individuals not in a common law relationship contributing to each other's RRSP.
- When an individual within a common-law relationship dies, for the most part investments and RRSP amounts transfer to the survivor without immediate tax consequences. When an individual dies without a common law survivor, the estate of the deceased is taxable on the value of the RRSP at death.
- Medical expense receipts and charitable donations are creditable to the individual who incurs them. In many instances the expenses and/or donations do not aggregate to a total that is useable by the single taxpayer. Within a common-law relationship such expenditures are transferable from one taxpayer to the other to allow some income tax relief.
- An individual who earns income from investments, whether interest or dividends, must claim 100% of the amount for tax purposes. Assuming that a common-law couple shares the investments, the total income earned could be split between the investors if proper arrangements are made.
- Similarly with capital gains or losses, both taxpayers within a common-law relationship should be able to use the gains or losses to mutual benefit depending, of course, upon other investment gains or losses within their individual portfolios. Individuals within a common-law relationship must be aware that superficial loss rules apply to them as a couple in the same manner as the loss rules apply to an individual. That is, if an investment is sold at a loss to apply against gains but the other spouse repurchases the stock within 30 days of the original sale, the loss would not be permitted.
- If one partner dies while employed, an employer may allocate a \$10,000 death benefit to the common-law partner. This amount would be tax free in the hands of the recipient. A tax free benefit is not allowed to others unless the recipient is a child of the deceased.
- In addition to the specific areas covered above there are many other related income tax, goods and services tax, and tax-credit issues (both federally and provincially) that change when individuals decide to live common law.

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Memories Are Made of This

Carelessly managed data storage can cause some very big headaches.

REGARDLESS OF THE SIZE AND TYPE of your business, chances are you are constantly gathering and storing data. Whether it is simply names and addresses or more detailed personal information such as social insurance numbers, drivers' licence numbers, medical history or family names and birthdates, such information must be protected in accordance with the provisions of the Privacy Act.

Unfortunately, news headlines about lost customer data can generate negative publicity for your company, which could potentially cost you business. To avoid such problems, ensure your company has policies governing data use, storage and disposal. Data that may no longer be needed may still be quite useful to criminals.

IN THE OLD DAYS...

When hardcopy was king, and files had been in storage long enough to meet statutory retention requirements, businesses simply called up the shredding company and watched as documents were safely destroyed. Digital data has not only different disposal problems, but also can be transmitted almost anywhere.

STORAGE TODAY

Today a wide variety of digital devices can become storage media for confidential data. For instance, PDAs or smartphones of staff and management may easily contain contact names, addresses, birthdates and photographs. USB flash drives and hard drives can store significant amounts of information, and could potentially contain data about your company, clients, engineering plans, budgets, passwords, addresses, or payroll, just to use a few examples.

Whether it's Mini SD, micro SD, or Compact Flash, they all store data. These memory cards increase a device's basic storage capacity to the extent they can store sufficient personal and business data to create serious breach-of-confidence issues if used by unauthorized individuals. Many of these cards are interchangeable between devices; for example, the card on the corporate camera may contain data that was on a laptop or PDA.

Digital cameras used to create visual records of client assets (trailers, trucks, backhoes, etc.), office and plant layouts are harmless when used for insurance purposes, for example. Such data in the wrong hands, however, could provide details on assets location, alarm systems, and floor or yard plans that could be used to commit a crime.

Many newer photocopiers have hard drives that support copy, print, scan and fax functions. Some copiers can also support user-based access to thousands of stored documents.

Old laptops and desktops rendered obsolete by changes in operating programs often remain loaded with information transferred to newer technology. This data is easily accessible and could be a goldmine of information for the unscrupulous if thrown away.

Let us not forget the storage devices that existed before flash memory such as tapes backups, ZIP drives and floppy diskettes. Much of their information has been transferred to new technologies but kept on the old computers. CD+/-R or DVD+/-R discs can store roughly 700MB or up to 8.5GB of data, respectively. There are probably hundreds of discs in your office containing backup data that is accessible to anyone with an optical drive on their computer.

ENSURE PROPER DISPOSAL OF DATA

Protecting and properly destroying old but still accessible information requires management to re-establish control.

PYC Briefs

PYC will be delivering two workshops at the **CHF Canada conference** in London in June: Lloyd Turner on the new HST and Liza Gowe on the ever popular Internal Controls. In addition, David Robertson, Charlie Petralito and JJ Pauze will be attending the conference.

Take Inventory

1. Inventory all old floppies, ZIPs, tape drives, computers, removed hard drives as well as equipment currently in operation.
2. Document the type, location and users of all media.
3. Determine whether the data and/or equipment need to be retained.
4. Determine whether the data was simply archival.
5. Find out whether the data has been migrated to newer equipment.
6. Establish the age of the data.
7. Is older equipment required to read the data?

Once all this has been determined you can decide whether the older data and equipment can safely be destroyed.

Understand the Flow of Information

- What information is being collected?
- What information should be considered confidential?
- Where and on what media is the information stored?
- Is the information on paper?
- Is the information on a centralized server?
- Is the information on individual standalones, laptops, or a combination of all of the above?

This knowledge will tell you where critical information is located and will assist in determining what needs to be destroyed.

Manage Data and Its Carrier

Once all the information has been located, you need to determine the possibility of limiting the media using and storing the data. For example, if data is stored on a main server, how frequently is it backed up, what medium is used and where is it stored?

Laptops, flash drives and other data storage media supplied to staff should be accounted for at all times. Any missing backup disks should be investigated immediately, especially if they contain sensitive information. All changes to equipment such as hard drive upgrades must be accounted for. Retired equipment should be inventoried and stored in a secure location until a decision is made to purge the data and destroy the medium.

Defining the medium recording the original data source and limiting the number of backups to a predetermined protocol will also make it easier to determine where the data resides when the time comes to destroy it. For example, if the original data is on a server and operational procedures require daily saving onto a hard drive and weekly saving onto a DVD or CD securely stored to record disc number, date deposited, date removed and by whom, there should be little need for additional backup. Should it become necessary to retrieve older data the records will be available.

DISPOSAL

Hard Drives Hard drives store information magnetically; deletion does not actually remove the data, it simply marks it as "deleted" to be overwritten

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What Am I Going to Do? ▶ continued from front cover

the assets available and their liquidity, as well as the amount of income that you and your family will need to pay the continuing expenses. This information will enable you to judge which assets may have to be liquidated, the tax impact of any sale, or whether it would be better just to use short-term borrowing to bridge any period of low income.

HELP AND UNDERSTANDING IS THERE FOR YOU

Dealing with the death of a spouse is never easy. The help of loving family and friends together with the empathetic understanding and practical assistance of those who work in business and government will ensure that the slow return to normality is managed with care. ♦

But I'm Single ▶ continued from inside front cover

taining care of the child. Thus, individuals with a child who earn less than \$40,726 will receive \$100 of non-taxable income. Live common law and have a combined income in excess of \$40,726 and the non-taxable benefit will be reduced by 2% for one child and 4% for two or more children for net family income exceeding the \$40,726.

- Individuals who receive the GST amount because they fall below an earnings threshold may find the amount starts to diminish when their combined family income is greater than the individual threshold.
- Similarly the National Child Benefit supplement payable will start to erode as the combined family net income starts to exceed the current threshold of \$23,710. By way of explanation:

If each single parent earned \$23,710 income individually, they would receive \$278 per month on the NCB program. Should the relationship become common law the combined income earned would double to \$47,420 and the supplement would drop to \$93 per month. (It should be noted that the Province of Alberta provides child benefit supplements that differ from the National program).

AN AUDIT MAY CHANGE YOUR STATUS

There are undoubtedly taxpayers who are living in a conjugal relationship but still file as individuals. Many will receive benefits and tax credits they would not be permitted if their relationship were classified as common law. Taxpayers should be aware that should an audit determine they are living common law, the taxpayers will undoubtedly be required to repay the taxable benefits received because they filed as single. Should the taxpayer decide to object to the audit findings it will be up to the taxpayer(s) to prove that they were not in a common-law relationship.

KNOW WHERE YOU STAND

There are many tax issues associated with living common law versus living separately. There are equally as many legal issues, and most are more expensive than the tax benefits or losses resulting from going from single to common-law status with CRA. Thus, regardless of personal convictions, taxpayers contemplating living together either as a common-law couple or as a support mechanism for each other would be well advised to seek both tax and legal advice as to the best means of avoiding future conflict with each other and with the CRA. ♦

Memories are Made of This ▶ continued from previous page

later. A determined individual could recover the deleted data. Prior to disposing of hard drives, consider wiping the drive with a utility that will overwrite each bit with null data, thus making data recovery that much more difficult.

CDs and DVDs Rewritable and reusable CDs or DVDs should be reformatted before being reused. Discs that cannot be reused should be shredded.

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Memory Cards If memory cards can be removed from PDAs, cell phones, cameras, etc., remove and reformat them for future use. Resident memory in portable devices should be reformatted and, as a final security, crushed to ensure that the memory cards are no longer useable.

Establish and Police Policies Staff policies should ensure that all equipment and memory devices are accounted for. Downloading sensitive data to home-office computers or personal laptops should be prohibited without management's permission.

Follow-up procedures should ensure data is erased from personal laptops once the job is completed and the office files are updated. Sensitive data files should be encrypted and password-protected to make unauthorized access more difficult. This will help prevent unauthorized distribution of company data and ensure all data can be destroyed in an appropriate manner.

The proliferation of electronic devices allowing storage of confidential data within an organization is overwhelming. Implementing and adhering to controls on how data is accessed, stored and ultimately destroyed can reduce the risk of unauthorized access to and distribution of sensitive information. ♦



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We hope that you find *info@pyc.net* a useful source of information. If you should ever have any specific questions or concerns regarding your own business or personal finances, please call us. We will gladly help in any way that we can.

If you would like to contact us by e-mail, we can be reached at *info@pyc.net*. Some of the articles appearing in this issue of *info@pyc.net* were prepared by the Canadian Institute of Chartered Accountants for the clients of its members.