

NetWorth

Do you have a financial cushion when things go wrong?

Many Canadians would have trouble paying for basic essentials if the primary wage earner of the family died or was unable to work due to illness or disability. In fact, almost two-thirds admit they would be hard-pressed to meet everyday living expenses immediately, or within a few months, if that income was cut off. Yet life has a way of throwing curveballs. Unforeseen events often place a tremendous amount of financial stress on affected individuals, and on their families, too.

Just as every person is unique, so too, is their lifestyle - and, by extension, their financial comfort zone. According to a BMO Wealth Institute report, 38% of Canadians perceive insurance to be too expensive, 27% think they're too healthy to need it, and 26% think they have enough coverage through work. Some six million Canadians believe they are underinsured, yet only 35% of those who think they need more life insurance intend to buy it soon. While two-thirds without life insurance say they need coverage, only one in four plans to buy it in the next year. In addition, many confess they simply don't know enough about insurance, or find the process too daunting. A significant number of Canadians (88%) are not very familiar with the options available for life insurance.

This is disconcerting given the unpredictability of life. A wealth plan is crucial for managing financial needs and helping to attain financial goals, but it is not a guarantee. Insurance fills the gap by providing a source of funds in the event of a health emergency, or to help maintain surviving spouse or partners' standard of living. As the word implies, insurance is all about safeguarding for those just-in-case moments. Its purpose is not to get rich quick, but to protect livelihood, dependents and wealth. It can not only ensure that there will be enough income to take care of financial commitments, but can also make sure that plans for the future are still achievable.

Insurance for every life stage

Beyond the obvious health, dental and home insurance, there are many other insurance products that are critical as one travels through life. These include life insurance, critical illness insurance, accident insurance, disability insurance, travel insurance and creditor's insurance.



Let's connect

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Regardless of a person's age or stage in life, insurance should be part of any discussion about planning for the future. The type of insurance a person buys is most often influenced by their age, income and dependents –because as life changes, insurance needs change, too.

Starting out

The best time to buy insurance is as soon as one can afford it, because youth and good health are the main drivers for the options available and their costs. This is when being young, unattached and without children is advantageous. Yet being young, healthy, unattached, and busy building their careers, many Millennials feel invincible and insurance may not be top of mind. A monthly life insurance premium could be less than half the amount of their average cell phone bill, yet only half (49%) of Canadian Millennials feel compelled to consider purchasing life insurance. If they get sick, have an accident or die, who will pick up the financial pieces? There are insurance products to protect what a young person is working hard to build in terms of personal and financial goals, to pay expenses not covered by provincial or employer health plans, and to cover medical emergencies. The key is thinking ahead.

Settling down

With post-secondary education complete and a new career underway, the time may be right to settle down with a partner, purchase a first home, and continue along the path to achieving financial and life goals. For a single individual, insurance that protects from a disability or serious illness becomes paramount. For those with dependents, the amount of coverage needed to ensure that loved ones can manage financially during a difficult period increases dramatically between the ages of 35 and 54. At this stage, there are insurance

products to help beneficiaries pay funeral costs, settle outstanding debt, provide living expenses and protect credit ratings.

Midlife

The years between 55 and 64 can be filled with exciting new employment opportunities. Unfortunately, it can also be a time of unwelcome change - think layoffs, separation, divorce and death of a partner. For those relying on employer group insurance for life and disability, these coverages would be lost if employment is terminated.

That said, insurance needs should be reassessed at this stage of life. As the family matures, insurance can provide funds for a surviving partner, provide tax advantages, assist in transferring wealth to children and grandchildren, and help pay for in-home caregivers or out-of-country medical care.

Retirement

Industry research shows that Canadians of all ages worry about having enough retirement income when they leave work, with almost one-quarter (24%) of employed Canadians between 50 and 65 lacking confidence that they will be able to live comfortably in retirement.

At retirement, insurance can cover debt obligations and estate tax liabilities as well as protect and ensure a sustainable and steady source of retirement income. Insurance can also pay costs of emergency medical treatment while away from home and it can provide funds for out-of-pocket expenses such as prescription medications, vision, dental and even travel emergencies.

We believe proactive planning and professional advice go hand in hand. Let's discuss and please let me know if you would like a copy of the BMO Wealth Institute report titled *Insuring for a financially secure future*.

In Trust Account

The term “in-trust account” or “informal trust” refers to an account the funds of which belong to someone other than the individual who opened the account. The contribution of funds by the individual who opened the account, typically a relative of a minor, creates a trust for the benefit of the minor, the beneficiary. The individual who opens the account by way of contribution of funds is called the settlor. The same individual is typically also the trustee of the informal trust. Often there are multiple trustees appointed.

Typically in-trust accounts are held without a formal Trust Declaration, however, since 2008 BMO requires a Supplementary Form to be filled out, to outline the terms of trust for purposes of clarity of intention. This Form evidences the settlor’s intention to create the trust, and specifies what the settlor’s intention is at the time of opening the account, with regard

to the distribution of the income and capital of the in-trust account to the minor beneficiary prior to the minor attaining the age of majority and beyond the attainment of the age of majority.

In compliance with tax law pertaining to attribution of income where a related minor is the recipient of income, BMO NB will be collecting the SIN of the individual contributing the assets to the account, the settlor. During the beneficiary’s minor years, all income will be attributed to the settlor, who is the taxpayer. Whether or not the beneficiary is entitled to the entire capital of the in-trust account at age of majority depends on the terms of trust with respect to distribution of capital stated on the Supplementary Form. Without terms of trust on the Supplementary Form which specifically prescribe an age beyond the age of majority at which time the capital is to be distributed, there is no authority to hold funds for the beneficiary child beyond the age of majority.

Cherry Picking Succession Law, European Union Style

Cross-Border Succession

In the age of globalization, many individuals and their families live and work straddling several countries or even continents. Legal regimes of the various jurisdictions often differ, giving rise to a conflict of laws¹ and as a result, there is little certainty around how one should plan his or her private financial affairs. One such private matter that affects everyone, at some point in one’s life cycle, is inheritance, or succession, the transfer of property after death.

The passing away of a Canadian, resident in Nova Scotia, who owned real estate in France, would create a situation where the succession laws of one jurisdiction were in opposition to the laws of the other jurisdiction. Which laws are to govern the succession of the property in France? At law, every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The laws of every state, therefore, affect and bind directly all property, whether real or personal, within its territory. Thus, in this example, the deceased Canadian’s property located in France would be subject to French succession laws, which differ from succession laws of Nova Scotia, notably, with respect to “forced heirship” in favour of spouse and children. But what if the Canadian individual in this example had wished to gift his property located in France to a friend who resided in France?

To further illustrate the difficulties one can face when a conflict of laws arises, consider this example: Married Husband and Wife resided in Germany for some years and then embarked on a period in their life when Husband resided in Ontario to cultivate a new

business and Wife remained in Germany. A while later Husband passed away, in Ontario. Husband had executed Multiple Wills – one to address his property in Canada, and the other to address his property in Germany. After Husband’s death, Wife filed an election under the appropriate Ontario law for Equalization of Net Family Property. Wife was unsuccessful in her claim against the estate of Husband because, said the Court, German succession law, not Ontario succession law, applied, and therefore, Wife’s rights to Husband’s estate were governed by German law rather than Ontario law.

The New Law (Regulation (EU) No.650/2012 the “Succession Regulation”)

Until recently there has been no uniform succession law applicable in Europe to give guidance to those who live or own property there, regarding the succession of their assets located in Europe, upon death. The need for legal certainty and simpler court proceedings pertaining to succession of estate assets has gone unmet among the European nations – until this summer. On August 17, 2015, the European Union Succession Regulation came into effect, to alleviate the difficulties and unintended results faced by individuals who own property in Europe as described in the examples, to eliminate the need for the conflict of laws principle from applying and being addressed in multiple Courts, and to bring about less cumbersome and less expensive international succession. All nations who are Nations of the European Union EXCEPT the United Kingdom, Ireland and Denmark, are signatories to the new Succession Regulation (“Participating Nations”).

The Good News

In essence, the Succession Regulation allows individuals who own property located within Participating Nations to opt out of that jurisdiction’s succession laws, in favour of another jurisdiction’s laws,

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¹ A conflict of laws arises when several legal regimes each with different (sometimes contradictory) laws apply to an event, each bringing about different legal outcomes.

even if THAT jurisdiction is not in Europe. The Succession Regulation enables individuals to choose either their nationality or their residency (where they differ) to determine the laws that will govern their succession, across all European borders (with the exception of the United Kingdom, Denmark and Ireland).

Some of the positive effects of adopting the new Succession Regulation by the Participating Nations include i) the application of a single law by a single court, enforceable in all other Participating Nations' jurisdictions; ii) creation of a European Certificate of Succession, akin to a Certificate of Estate Trustee or Letters Probate in Canada, which, once issued, authorizes the executors or administrators of an estate to act upon the estate and, provides the beneficiaries with the ability to exercise their entitlement, in other Participating Nations (countries) without further proceeding; iii) citizens and/or residents of Participating Nations with multiple nationalities are able to choose whether the law applicable to their succession will be that of their residence or that of (one of) their nationality; and iv) elimination of parallel Court proceedings and conflicting judicial decisions and therefore, significant reduction in cost and time spent in the administration and distribution of estates.

Non-Participating Countries

Denmark, Ireland and the United Kingdom have not signed on to the Succession Regulation. In those countries, the national succession laws cannot be ousted. Property located in those countries will, at death of the owner, be subject to local succession law, and there will not be the option for the application of another jurisdiction's succession laws (on the basis of another nationality or residency elsewhere). However, the succession laws of these non-participating countries may apply elsewhere, in another country, if so chosen by the deceased in the planning, so long as that other country is a Participating Nation. For example, a United Kingdom resident or citizen who owns property in Spain or France and wishes to bypass the "forced heirship" rules, may opt to apply United Kingdom succession laws to the succession of his or her property located in France or Spain. In fact, the mere execution of a United Kingdom Will is akin to automatically choosing to apply the succession laws of the United Kingdom. It is possible however, if one does not wish to have United Kingdom succession laws apply to his or her property in another (Participating Nation) jurisdiction, to direct so in the Will.



Conclusion

As a rule of thumb, the evolution of law follows policy decisions, at some level. Sometimes new law is meant to impose tighter restrictions, to narrow or limit citizens' rights or advantages, and other times legal reform is meant to expand, enable, citizens' rights and advantages. In the case of the European Union Succession Regulation, it seems to be the latter. For Canadians who have ties to Europe, this new law will provide advantageous estate planning opportunities.

As always, there is a caveat: estate planning is never simple. The introduction of new law creates, in addition to the new opportunities and advantages, further complications. It is important for anyone who owns property within the European Union to review his or her estate plan with the appropriate professional. The rules are complex. While revising Wills to take advantage of the new succession planning opportunities is wise, conflicts of laws may still arise in the future due to the opting out of some of the European Union nations from signing on to the Succession Regulation. Obtaining a specialist's professional advice is recommended.



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