

## Marriage Equality



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Adam Black practises exclusively in the area of family law. Adam provides sound and practical advice to his clients with respect to all family law issues, including marriage contracts, separation and divorce. Adam and his husband, Steven, were married in 2007, not long after marriage equality became the law.

**In 2005, marriage equality became the law.** Following a number of court decisions across the country, the Canadian government finally enacted legislation which extended the right to marry to same-sex couples. Since that time, thousands of same-sex couples have chosen to celebrate their relationship through marriage. Those married couples have also chosen to accept the legislatively imposed financial rights and responsibilities which equally apply to same-sex couples. For many, those obligations are completely unknown at the time of marriage and become known only in the unfortunate event of a breakdown of the relationship. It is imperative that all persons contemplating marriage understand its implications. With equality comes the need to understand what equality means. This article discusses, in a very general sense, those implications.

### Property

Broadly stated, married spouses share in the value of all property (whether it is owned jointly or solely) that is accumulated during the course of marriage. Each spouse is given credit for the property that

he or she owned on the date of marriage, although any increase in the value of such is to be shared. Property that is excluded from this sharing includes gifts from third parties, inheritances, life insurance proceeds and money received as a result of a personal injury. The most important exception, however, is the matrimonial home, that being the home the parties ordinarily occupy as their family residence at the time of the breakdown of the relationship. If this is the same home that was owned on the date of marriage, the party who owned the home **will not** receive credit for the value of the home owned on the date of marriage. In other words, the entire value of the home will be shared by the spouses.

### Spousal Support

The legal recognition of an economic partnership through marriage does not stop with the sharing of property. In the event of separation, one spouse may owe the other spousal support. Entitlement to support arises in the event there is financial disadvantage that accrues to one party as a result of the separation or where one spouse has put his or her career on hold in order

to support and care for the family unit. At the same time, the law also recognizes an individual's obligation to support himself or herself and such consideration will affect the outcome of the amount and duration of spousal support that will be paid.

### **Marriage Contracts**

In the event that individuals who intend to marry, or who are already

married, do not wish to be governed by the law of property division and/or spousal support, it is possible to enter into a contract which implements different property and/or support rights and obligations. That said, marriage contracts are often complex documents requiring certain elements and considerations to insulate them, as much as possible, from future challenge.