



# CROSSING THE RAINBOW BRIDGE

A Resource Supporting End-of-Life Planning and Care  
Needs of LGBTQI2S Older Adults in Ontario



## Crossing the Rainbow Bridge

This information is current to the time of publishing. Please refer to resources or a legal professional for the most current information.

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## Crossing the Rainbow Bridge

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## Funded By:



## **Introduction**

Founded in 1995, Egale Canada Human Rights Trust (Egale) works to improve the lives of LGBTQI2S people in Canada and to enhance the global response to LGBTQI2S issues by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education and community engagement. Egale's vision is a Canada, and ultimately a world, without homophobia, biphobia, transphobia, and all other forms of oppression so that every person can achieve their full potential, free from hatred and bias.

The LGBTQI2S Legacy Toolkit is a resource that has been created by LGBTQI2S community members for LGBTQI2S community members. This document provides information on how LGBTQI2S older adults in Ontario can plan for legal matters and end-of-life care, as well as guidance for asserting these wishes through legal documents in preparing for end of life.

## **In this resource you will find:**

- » your rights in end of life planning and care;
- » how to assert wishes with regard to end of life care through an Advance Care Directive;
- » selecting a substitute decision maker should one become “mentally incapable”;
- » how to outline wishes for material possessions, estate, and the resting of the physical body after life has ended;
- » tax benefits available to people who are older, have a disability, and/or care for someone who has a disability;
- » assessing preparedness for end of life planning; and
- » available resources and supports in Ontario for LGBTQI2S older adults.

# 1.

# Human Rights

## **Human rights in Canada are protected both federally and provincially.**

Federally, human rights legislation is found within the *Canadian Human Rights Act*. Provincially, human rights legislation is found within the *Ontario Human Rights Code*. Both of these pieces of legislation specifically protect the grounds of sex and sexual orientation, and in Ontario both gender identity and expression are explicitly protected.

## **Canadian Human Rights Act**

- » Race
- » National or ethnic origin
- » Colour
- » Religion
- » Age
- » Sex
- » Sexual orientation
- » Marital status
- » Family status
- » Disability
- » Conviction of an offence

## **Ontario Human Rights Code**

- » Citizenship
- » Race
- » Place of origin
- » Ethnic origin
- » Colour
- » Ancestry
- » Disability
- » Age
- » Creed
- » Sex / Pregnancy
- » Gender identity
- » Gender expression
- » Family status
- » Marital status
- » Sexual orientation
- » Receipt of public assistance
- » Record of offence

**You may encounter situations where your human rights are not respected. If this happens, you have the option of filing a human rights complaint.**

**For More Information...**

For more information around filing a human rights complaint to the Canadian Human Rights Commission, visit:

<https://tinyurl.com/hakhbs8>

For more information around filing a human rights complaint to the Ontario Human Rights Commission, visit:

<https://tinyurl.com/zmr4uuc>

# 2.

# Your Rights in Care

While the *Ontario Human Rights Code* and the *Canadian Human Rights Act* protect human rights generally, there are more specific pieces of legislation which protect your rights in a care setting. These rights are covered under two main pieces of provincial legislation: the *Home Care and Community Services Act* and the *Long-Term Care Homes Act*. Understanding these rights will increase your ability to advocate for yourself and loved ones while in care.

# Rights in Home Care and Community Services

When accessing home care and community services, you and your loved ones are protected under the Home Care and Community Services Act of 1994. **The act states that you or your substitute decision maker have the right to:**

- » give or refuse consent to treatment or services;
- » receive services which are sensitive to human rights;
- » privacy and confidentiality;
- » protection from abuse in care; and
- » receive information about the service, service provider, and the laws, policies, and procedures (including the formal complaints procedure) surrounding the service.

## What is a Substitute Decision Maker?

A substitute decision maker is a person who makes decisions on your behalf should you be considered mentally incapable of doing so. If you have arranged a Power of Attorney for yourself, this is the person who will be your substitute decision maker. If you have not, then your next-of-kin will have the ability to make decisions on your behalf. For more information around substitute decision makers, visit the section *Who Decides? Consent and Power of Attorney*.

**If you are receiving home care and feel that your rights are not being respected, CLEO (Community Legal Education Ontario) has created a toolkit explaining the complaints and appeals process in Ontario.**

To access this toolkit, visit:

<https://tinyurl.com/jmsq7y8>

## **For more information...**

Researchers Andrea Daley and Judith MacDonnell from York University created the LGBTQ Home Care Access Project to explore the experiences of LGBTQ home care service users and service providers. This project can help inform others of the barriers that LGBTQ folks face in accessing and receiving services. For more information about this project, visit:

*<http://www.yorku.ca/lgbthome/>*

For more general information about the Home Care and Community Services Act, please visit:

*<https://tinyurl.com/jh8ww5u>*

# Rights in Long-Term Care

If you or a loved one is residing in a long-term care setting, you still have access to all of the rights we just explored in the *Home Care and Community Services Act*, in addition to the *Long-Term Care Homes Act of 2007*. **This act states that you and your loved ones have the right to:**

- » live in a safe and clean environment;
- » be properly sheltered, fed, groomed, clothed;
- » keep and display personal possessions;
- » **meet privately** with a spouse, partner, or friend **without any interference** — in a room that assures this privacy;
- » have friends and/or family present 24 hours a day while dying or very ill;
- » **designate a person to receive information regarding any transfer or hospitalization, and have this person receive the information immediately;**
- » share a room with another resident, according to mutual wishes;
- » manage personal financial affairs, if mentally capable;

- » have access to protected outdoor area; and
- » **have any friend, family member, or important person attend any meeting** with the licensee or staff of the home

**If you or a loved one is being denied access to your rights in a long-term care home, information around filing complaints can be accessed at:**

<https://tinyurl.com/j9dyjzx>

## **For more information...**

The City of Toronto has also created a toolkit to help long-term care homes remove barriers to accessing care and create a positive environment for LGBT folks. For more information about this toolkit, visit:

<https://tinyurl.com/hob3utt>

For more information about the Long-Term Care Homes Act, visit:

<https://tinyurl.com/gnrxycw>

# 3.

# Who Decides?

**Consent and Power  
of Attorney**

In this section we will focus on legislation that gives you the right to make decisions about your own care and the care of your loved ones. We will also outline the responsibility of Powers of Attorney and explain how they play a role in advocating for your rights.

# Rights in Home Care and Community Services

The rights that you and your loved one have regarding health care and consent are covered under the *Health Care Consent Act of 1996*. The guiding principle of this legislation is:  
**“No treatment without consent”**

Consent has three main elements:

- » **Voluntary:** This decision was made based on free will, there was no coercion to do so
- » **Informed:** The information about the treatment has been explained by the healthcare provider
- » **Mentally capable:** This person is considered to have the mental capacity to make decisions regarding their own care

Healthcare providers **do not need** to obtain consent to administer treatment if you are considered to be in an emergency or life-threatening situation, you are unable to consent, and your substitute decision maker is not available for contact.

For more information about the Health Care Consent Act of 1996, visit:

<https://tinyurl.com/glnjzb3>

## **What does Mentally Capable Mean?**

Mental capacity is a legal and medical term which describes a person's ability to consent to decisions around personal care and finances. If you are considered "mentally capable" you can make these decisions for yourself. If you are considered "mentally incapable" your substitute decision maker will be in the position of making these decisions for you.

The mental capacity of someone can be assessed by a physician who is offering treatment or can be challenged through a court order by someone in your life. If a court order is filed, mental capacity will be assessed by an assessor who is a physician or social worker. The assessor will assess two elements: the person's **understanding** (based on the person's factual knowledge base and understanding of available options) and **appreciation** (based on the person's realistic appraisal of outcome and justification of choice). This assessment is called a Delusional Test.

The test includes assessments of an individual's ability to make decisions around a number of areas, including health care, nutrition, shelter, clothing, hygiene, and/or safety. Each decision making area is individually assessed, so if you were deemed mentally incapable of making

decisions in only a few areas, you would only lose your right to make decisions in those specific areas.

**In an assessment for mental capacity, you are entitled to the following rights:**

1. An explanation of the purpose of the assessment by the assessor
2. An explanation of the implications of being deemed mentally incapable
3. To refuse the capacity assessment
4. To receive the results of the assessment in writing

**If you or a loved one has been deemed mentally incapable and would like to challenge this decision, an appeal can be made to the Consent and Capacity Board.**

**For more information, visit:**

<http://www.ccboard.on.ca/>

**For more information...**

More information around mental capacity and mental capacity assessments can be accessed at:

<https://tinyurl.com/gnnxoeb>

# Understanding Substitute Decision Makers and Powers of Attorney

A substitute decision maker is someone who can legally make decisions about your treatment on your behalf should you be considered incapable to do so. This person is chosen based on a legal hierarchy outlined in the *Substitute Decisions Act* by the attending healthcare professional. It is important to note that this hierarchy of substitute decision makers favours biological or legal family (such as spouses, parents, or adult children), over chosen family (those whom you are close to but may not have a legal relationship with, such as close friends, partner(s), etc.).

While you legally do not have to assign a substitute decision maker, you have the right to assign someone who you trust to make decisions through the creation of a **Power of Attorney**. This is a legal document that you have voluntarily created to give an individual (or individuals) the right to act or make decisions on your behalf.

In Ontario there are two types of powers of attorney:

- » **Power of Attorney for Personal Care** (who makes decisions related to your personal care such as medical treatment and housing)
- » **Continuing Power of Attorney for Property** (who makes decisions around your property and finances).

These two different types of powers of attorney are assigned in two separate and different documents.

**If a Power of Attorney has not been assigned, the attending healthcare provider will assign one of the following people to make these decisions on your behalf:**

1. Spouse or partner
2. Parent or child
3. Sibling
4. Any relative
5. Office of the Public Guardian & Trustee

A single person or multiple people can be selected to act as one's Power of Attorney. If multiple people are selected they must all come

to a consensus around all decisions made, unless it is stated that they may act “jointly and severally”. This would allow the multiple Powers of Attorney to make decisions both independently and through consensus. Allowing Powers of Attorney to act independently may be a good idea if decisions need to be made quickly and one of the named Powers of Attorney is unavailable.

Powers of Attorney must be:

- » over 16 years of age;
- » mentally capable;
- » ready to be contacted;
- » legally able to have access to you; and
- » someone who is not receiving compensation to care for you (unless this person is also a spouse, partner or relative).

The unfortunate reality for those of us in the LGBTQI2S community is that our relationships can go unrecognized or be ignored by healthcare professionals. This means that it is particularly important to keep in mind that your Power of Attorney for Personal Care may have to self-advocate for their role to be recognized in your care, as well as advocate on your behalf to ensure that your human rights and rights in care are respected.

# Who Should I Choose as My Power of Attorney for Personal Care?

The first Power of Attorney that we will explore is a **Power of Attorney for Personal Care (POAPC)**. A POAPC is someone who you have designated to make decisions regarding your personal care, such as housing and healthcare. This person has the authority to make decisions around where one will live and receive care, clothing and dietary needs, and medical treatment.

This should be someone who is concerned with all aspects of your future personal care. When selecting a Power of Attorney for Personal Care, it is important to choose someone who will:

- » respect your religious beliefs and spiritual values;
- » ensure that your dietary needs are respected;
- » attend to your needs/preferences around appearance – clothing, hair, etc.;
- » advocate for the use of your preferred name and pronouns;

- » make decisions around the kind of treatment interventions you will receive – aggressive interventions versus pain management;
- » make decisions around where you will receive care — at home, in a hospital versus in a hospice palliative care setting;
- » advocate for the wishes outlined in your Advance Care Directive;
- » advocate for your human rights in healthcare settings

**Creating Power of Attorney documents does not cost money or require the assistance of a lawyer. The forms provided by the Ministry of the Attorney General of Ontario are both free and legally binding. These forms can be accessed at:**

<https://tinyurl.com/cmcwb9o>

# Who Should I Choose as my Continuing Power of Attorney for Property?

The second Power of Attorney that we will explore is a **Continuing Power of Attorney for Property**. This is someone who you have designated to manage your finances should you be considered mentally incapable to do so. On your behalf, this person will be able to:

- » access and complete your banking;
- » sign cheques;
- » buy or sell real estate;
- » buy or sell your personal property; and
- » take out loans.

It is important to note that this person can take a fee for fulfilling this duty. If you do not want this person to take a fee for their role, you must clearly include this in your Continuing Power of Attorney for Property document.

When selecting a Continuing Power of Attorney for Property, it is important to choose someone who is:

- » experienced in managing personal finances – paying bills, taking out loans, buying or selling property or real estate;
- » aware and respectful of your financial wishes;
- » trustworthy of acting in your best interest;
- » available to manage finances;
- » reliable to contact;
- » organized and will pay bills on time; and
- » educated around the roles and responsibilities of a Continuing Power of Attorney for Property.

**Creating Power of Attorney documents does not cost money or require the assistance of a lawyer. The forms provided by the Ministry of the Attorney General of Ontario are both free and legally binding.**

These forms can be accessed at:

<https://tinyurl.com/cmcwb9o>

# 4.

# Tax Benefits

Another important thing to consider is tax benefits. As you or a loved one may have experienced, the cost of medication and living expenses for people who are retired, unable to work because of disability or illness, or care for someone unable to work can be greater than some can financially handle.

We've outlined some of the federal and provincial tax benefits that can help in these situations. It's important to keep in mind that you can only access most of these benefits through a **tax-based financial needs assessment**. For this assessment, your federal and provincial taxes must be completed and up to date.

# **Provincial Prescription Medication Coverage**

## **Trillium Drug Plan (TDP)**

TDP is a financial assistance program that supports residents in Ontario with the cost of prescription drugs. To be eligible for these benefits, approximately 3-4% of your after-tax household income must go towards prescription drugs.

When applying for TDP, you will need to do a financial assessment based on income taxes to determine the necessary deductible. Because the application assesses household income, your coverage can be received as an individual if you live alone, or as a couple or family (including same-sex and common-law partners).

More information, including a full list of drugs covered can be accessed at:

<https://tinyurl.com/gu9a94y>

## Ontario Drug Benefits (ODB)

ODB is a financial assistance program for residents of Ontario 65 years or older (with a valid health card) that supports the cost of prescription drugs. If you are younger than 65, you may also qualify for ODB if you are living in a long-term care home, or are enrolled in one of the following programs: *Home Care, Ontario Works, Ontario Disability Support Program, and Trillium Drug Program.*

ODB covers most of the cost of over 4,300 prescription drugs as well as allergy shots, Epipens, diabetes products, and some drugs used in treatment for HIV/AIDS and in palliative care. The amount ODB covers depends upon your yearly income after taxes and your marital status. In other words, you can receive ODB coverage either as a single senior, including widowed spouses, or as a couple, including (same-sex and common-law partners).

A full list of the drugs covered by OBD and the varying rates based on income and marital status can be accessed at:

<https://tinyurl.com/jz8ckld>

# **Provincial Income Support Programs**

## **Ontario Works (OW)**

OW is a temporary financial assistance program for Ontario residents in financial need. To apply for OW, you will need to include a tax-based financial assessment. It's important to note that recipients of OW are often required to participate in employment assistance activities to receive financial benefits.

More information can be accessed at:

<https://tinyurl.com/7prp6jd>

## **Ontario Disability Support Program (ODSP)**

ODSP provides income support and medical benefits for those with a disability and their family. To qualify for ODSP you must have a disability (as described by the ODSP Act, view the link below for more information), have a healthcare provider complete the necessary forms to verify the disability, and demonstrate financial need through a tax-based assessment completed by an ODSP case-worker.

For more information around ODSP, visit:

<https://tinyurl.com/zv5l4ou>

# **Federal Income Support Programs**

## **Canada Pension Plan (CPP)**

The Canada Pension Plan provides partial replacement of income to you and your family because of retirement, disability, and/or death. The income received is based on past income contributions to CPP, meaning that those who have not paid into the program will have limited access. You must apply to gain access to any of the following programs, as they do not start automatically.

There are three types of CPP benefits available, they include:

## CPP Retirement Pension

At the age of 65 you can apply to receive full retirement pension, but it can be received at 60 with a reduction to the rate, or at 70 with an increased rate.

## CPP Disability Benefits

Should you become severely disabled to the extent that you are unable to work, you and your family may be eligible to receive a monthly benefit from CPP.

## CPP Death and Survivor Benefits

After you die, your estate is eligible to receive both death and survivor benefits. The death benefit is a one-time payment to the estate of the deceased person. Similarly, survivor benefits may be paid to the estate of the deceased person.

For more information on CPP benefits, visit:

<https://tinyurl.com/gn3wlhr>

## **Old Age Security (OAS)**

OAS is the federal government's largest pension program. It is government funded, meaning you do not pay into it directly. The OAS pension is received as a monthly payment. Older adults currently living in Canada are eligible for OAS if they are 65 years old or older, a Canadian citizen or legal resident, and have lived in Canada for at least 10 years after the age of 18. Older adults living outside of Canada must likewise be 65 years old or older, have been a Canadian citizen or legal resident on the day before they left Canada, and lived in Canada for at least 20 years after the age of 18.

OAS can be deferred for up to 60 months (5 years) after you become eligible. You may choose to defer OAS if you already have a source of income or are employed, since OAS is a taxable income and people who earn the maximum annual income (see link below) may have to repay part of their OAS payments. For each month OAS is deferred, the monthly pension payment will increase by 0.6%, up to a maximum 36% at the age of 70.

More information on how the OAS pension is calculated and how to apply can be accessed at:

<https://tinyurl.com/jnu8qfk>

## **Guaranteed Income Supplement (GIS)**

GIS is a monthly, non-taxable income benefit meant to supplement those older adults who live in Canada, have low incomes, and receive OAS pension payments. To be eligible for GIS, you must be receiving an OAS pension and have an annual income below the maximum annual threshold.

More information regarding GIS eligibility can be accessed at:

*<https://tinyurl.com/jdkcow3>*

# **Federal Caregiver Benefits**

## **Compassionate Care Leave**

Compassionate Care Leave is a federal program which pays Employment Insurance benefits to people who have been away from work temporarily to provide care or support to a loved one who is gravely ill and who is at significant risk of death within 26 weeks. It is important to note that this support can be for a legal family member or for someone “like a family member”. To be eligible for this, you must have healthcare providers complete forms (available online) which show that the person whom you are supporting is in need of this support or care and is at risk of dying within 26 weeks.

For more information and to access the necessary documents, visit:

<https://tinyurl.com/zca74ws>

## Caregiver Tax Credit

The Caregiver tax credit is an annual federal tax credit that is available for those who take care of someone who lives with them. To qualify for this credit, you must care for a dependent who you live with, who is 18 years of age or older, dependent due to a disability or impairment, and whose net income is below a particular level (the exact qualifying amount is adjusted annually).

For more information, visit:

<https://tinyurl.com/y8crtjx>

# 5.

# **Ensuring Your Wishes Are Respected:**

## **Advance Care Directives and Planning**

Advance care planning is the process of reflecting on, describing and communicating your wishes around the ways that you would like to receive care. Advance care planning is communicated to substitute decision makers and Powers of Attorney to help inform the decisions that they would make on your behalf. Advance care planning can include the creation of an Advance Care Directive document, as well as planning for other possibilities like resuscitation and organ and tissue donation.

# **What is an Advance Care Directive?**

An Advance Care Directive is a document which communicates your wishes regarding the ways in which you would or would not like to receive care, when you are unable to communicate those wishes for yourself.

An Advance Care Directive can be written, audio recorded or video recorded and can be as detailed or simplistic as you would like. If a situation arises that is unaddressed in the Advance Care Directive, your substitute decision maker will have authority to make the decisions around your personal and medical care. The creation of this document will involve considering your personal values around capacity.

The following are examples which could be considered before completing an Advance Care Directive:

- » feeding tube or spoon feeding;
- » artificial breathing;
- » incontinence;
- » dependence on others for bathing and hygiene;
- » loss of sight or hearing;
- » loss of mobility;
- » aggressive in-hospital treatment vs palliative care (pain and symptom management);
- » resuscitation and CPR;
- » palliative sedation;
- » brain damage in vegetative state; and
- » organ preservation for donation.

# What is CPR and DNR?

Cardiopulmonary resuscitation (CPR) is a medical intervention that is often performed on people experiencing cardiac arrest in an effort to re-start their heart and delay the death of tissue. While CPR can be a lifesaving intervention, if you are experiencing a widespread or terminal illness you have the option to decide whether it would be beneficial in the context of your personal situation. This decision can be formally documented through a Do Not Resuscitate Confirmation Order (DNR) which notifies healthcare professionals of your decision. This official government form is issued by a healthcare professional and has its own unique serial number. It is essential that these are included to ensure that the form is valid and recognized by first responders and healthcare professionals.

If you have completed a DNR form, it is crucial to share this decision with those closest to you, particularly your substitute decision-maker (or Power of Attorney for Personal Care) and have the document either openly displayed or on your person. This is because first responders and health care providers have to make decisions quickly around whether or not to engage in CPR, and will engage in CPR if they do not have access to the DNR.

# What is Organ and Tissue Donation?

One aspect of planning for your care including deciding whether to donate your organs or tissue through the Trillium Gift of Life Network. Donating organs and tissue can mean that they are used in transplants to enhance the lives of other people or for research purposes.

If you would like to include organ and tissue donation as a part of your final wishes, you can register as an organ and/or tissue donor by:

- » Going online to:  
<https://tinyurl.com/phppj4d>
- » Visiting a ServiceOntario Centre to register in person in person, or
- » Mail written consent form to:  
ServiceOntario  
Organ Donor Consent  
PO Box 48  
Kingston, ON K7L 5J3

For more information about organ and tissue donation, visit [www.beadonor.ca](http://www.beadonor.ca) or call The Trillium Gift of Life Network at their toll-free number: 1-800-263-2833.

Though sexual orientation and sexual behavior have no bearing as to whether you can register to donate organs and tissues, it can place some restrictions around whether or not the donation will be used as a transplant in another patient, or used for research purposes.

The Canadian Standards Association has outlined a list of factors and behaviors that have been associated with an “increased risk” of HIV, Hepatitis B and Hepatitis C. These risk factors include:

- » people assigned male at birth who have had sex with people assigned male at birth in the past five years;
- » people who have used nonmedical intravenous drugs in the past five years; and
- » people who have engaged in sex work in the past five years.

Organs and tissue donated by individuals who met the above criteria will only be considered for transplant to another patient in “circumstances of exceptional distribution”, meaning that there are no other organs available and the potential recipient has given consent to receive organs or tissue from an individual who has been labeled as having these risk factors.

5. Ensuring Your Wishes Are Respected:  
Advance Care Directives and Planning

Regardless of how your donation is used, your contribution will be benefitting the lives of others, either directly through transplant or through the advancement of medical science through research.

# 6.

# Medical Assistance in Dying



Legislation outlines that a person may receive medical assistance in dying only if they meet all of the following criteria:

1. They are eligible — or, but for any applicable minimum period of residence or waiting period, would be eligible — for health services funded by a government in Canada;
2. They are at least 18 years of age and capable of making decisions with respect to their health;
3. They have a grievous and irremediable medical condition, meaning that:
  - The person is in an advanced state of irreversible decline in capacity,
  - The illness, disease or disability or the state of decline causes enduring physical or psychological suffering that is intolerable and cannot be relieved under conditions that the person considers acceptable, and
  - Natural death has become naturally foreseeable, taking into account all of the medical circumstances, although a prognosis as to the specific length of time remaining is not necessary;

4. They have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
5. They give informed consent to receive medical assistance in dying

If the person requesting medical assistance in dying is unable to sign and date the request, another person — who is at least 18 years of age and who understands the nature of the request for medical assistance in dying — may do so in the person's presence on their behalf.

There are two types of medical assistance in dying available in Canada, they include where a physician or nurse practitioner:

1. Directly administers a substance that causes death (commonly referred to as voluntary euthanasia)
2. Gives or prescribes a drug that is self-administered to cause death (commonly known as medically-assisted suicide)

For more information about Medical Assistance in Dying, visit:

<https://tinyurl.com/j5w25zu>

# 7.

# Last Will and Testament and Estate Planning

As we've explored, it is very important to choose a Power of Attorney that you trust to advocate for you and your wishes should you be deemed mentally incapable. However, Powers of Attorney cannot continue to advocate for someone once they have passed. For this reason, it is crucial that you create a last will and testament.

A last will and testament is a formal legal document which allows you to assert your wishes after death. Having this document helps ensure that your wishes regarding your possessions (including pets), finances, minor children (under 16 years of age) in your custody, estate, funeral or burial and remains will be respected after you have died.

For LGBTQI2S communities, last wills and testaments are especially important documents as they can ensure your wishes are granted to those with whom you do not have a legal relationship, including your partner(s), friends, and chosen family members.

# Clarifying Legal Language: Benefactors, Executors, and Beneficiaries

There are generally three roles within a will that you or a loved one may find themselves in: benefactors, beneficiaries, and executors.

**Benefactors** are those who are giving or donating their possessions or assets to others. In the case of wills, estates, and insurance policies this is a person who has died and has left their assets to benefit others. This person may also be referred to as a **testator**, meaning someone who has written a will.

**Beneficiaries** are those who receive possessions or assets from a benefactor. Beneficiaries are often named by benefactors in a will or insurance policy.

**Executors** are those who distribute the assets of the benefactor to their beneficiaries. Executors are selected by benefactors and explicitly named in wills. The process of distributing assets to beneficiaries is known as administering the estate. This person may also be referred to as an Estate Trustee.

# Preparing a Will

There are many ways to create a formal will, such as:

- » accessing a lawyer or legal counsel for assistance
- » purchasing a resource such as a will kit to assist in its creation
- » by hand-writing one's own will – called a 'Holographic Will.'

Each of these ways of writing a will have their benefits and drawbacks. Nevertheless, when writing or preparing to write a will, you should consider and include the following:

- » Personal Information
  - Name (legal), phone number, address, email, date of birth
    - A preferred name and pronouns may also be included to direct how one would like to be referred to after passing. For example, on an epitaph or in an obituary.
  - Canadian Citizenship Information
  - All copies of previous wills

- Legal relationship documents – marriage contract(s), cohabitation agreement(s), other spousal or common-law documentation or information
- » All family, dependent, and executor information
  - Clearly identify the executor
    - They must be identified using their legal name, but a preferred name and/or pronouns may also be included to direct how they are referred to.
- » Past and present spousal documentation
- » Spouse's/Partner's contact information
- » Name, personal and contact information of any/all children/dependents
- » Previous Will(s)
  - Copies of previous wills
  - Spouse/partner will(s)
  - Any trusts set up to benefit another person (provide details)

- » Information regarding professional advisors
  - Name and contact information of lawyer(s), accountant(s), investment advisor(s), insurance agent(s)
  - If the testator is the executor of any other will(s) – provide details
- » Any income information
  - Current annual income from ALL sources
- » All asset information
  - Real estate – location, value, whose name it is in
  - Automobiles, boats, household goods, furniture, machinery, equipment
  - Bank account(s) and safety deposit box(es) – location, whose name it is in
  - Bonds and/or shares
  - Foreign investments
  - Other valuables such as art, jewelry, heirlooms, and pets
  - Life insurance policies, annuities, RRSPs, RRIFs, RESPs, pensions and investment details
  - Any business interests and debts owing from third parties

- Legal relationship documents – marriage contract(s), cohabitation agreement(s), other spousal or common-law documentation or information
- » All family, dependent, and executor information
  - Clearly identify the executor
    - They must be identified using their legal name, but a preferred name and/or pronouns may also be included to direct how they are referred to.
- » Past and present spousal documentation
- » Spouse's/Partner's contact information
- » Name, personal and contact information of any/all children/dependents
- » Previous Will(s)
  - Copies of previous wills
  - Spouse/partner will(s)
  - Any trusts set up to benefit another person (provide details)
- » Wishes for remains
  - Burial or cremation
  - How one would like to be referred to on an epitaph (if applicable)
  - Wishes for service (funeral, wake)

- » Any and all liabilities outstanding
  - Mortgages – amount owing, location, name of mortgagee
  - Loans, credit card balances and other debt

If you decide to access legal support to write a will, preparing ahead of time by collecting as much of the information we listed above can reduce the cost.

Regardless of the way you prepare your will, you must make sure to clearly name an **executor** as the person who has authority to act on your behalf in carrying out your final wishes. Wills also require witnesses to sign the document. These witnesses cannot be named as **beneficiaries** in the will. The way in which you prepare your will determines how many witnesses are needed: handwritten wills require one witness signatory, and all typed wills require two witness signatures.

In some cases, there may be disputes around whether a person's will or their **executor** is legitimate and authentic. These situations may be more common for members of LGBTQI2S communities, especially for partners or chosen family members who are not legally recognized. If you or someone else raises concern about a will's authenticity, the will can be reviewed by the courts through a process called **probate**.

During a probate process, the courts determine if the document is the valid last will of the benefactor and appoint the executor of the estate. It is important to note that filing an application for the probate process is associated with a number of costs, including:

- » An estate administration tax
- » Probate application fees
- » Legal counsel costs
- » The cost of securing any bonds or sureties (if necessary)

Wills that have been prepared with the help of legal support are the most likely documents to withstand a probate process. For this reason, if yours or a loved one's relations with their legal family members are strained and the will names benefactors who are not legal relations, we strongly recommend that you access legal support to legitimize your will.

For those who are living on reserves, particular elements are specified for inclusion in a last will and testament to ensure that property and possessions are appropriately divided. For more information, please visit the Aboriginal Affairs and Northern Development Canada website:

<https://tinyurl.com/h3lcral>

8.

# **Self- Assessment Checklist**



The following questions will assess your preparedness for end of life planning:

## **Advance Care Directive**

- Have you thought about what you would like your care to look like at the end of your life?
- Have you considered the impacts of resuscitation and made decisions about whether or not to receive this intervention?
  - If you have decided against resuscitation, have you documented this through a *Do Not Resuscitate Order Form*?
  - If you have a Do Not Resuscitate Order Form, is it stored in a safe and accessible place?
  - Have you shared these wishes with those closest to you?
- Have you considered organ and tissue donation?
  - If yes, have you registered your consent to do so?
- Have you documented advance care planning in an Advance Care Directive?

- Have you shared your Advance Care Directive with those who are closest to you?
  - Is this document stored in a safe and accessible place?
  - Do those closest to you have a copy of your Advance Care Directive?

## **Power of Attorney for Personal Care (POAPC)**

- Have you thought about who you would like to have make decisions on your behalf regarding your care if you are unable to do so?
  - Have you legally appointed this person as your Power of Attorney for Personal Care?
  - Do they know that you have appointed them as your Power of Attorney for Personal Care?
  - Is the contact information listed for your POAPC current and correct?
  - Is this document stored in a safe and accessible place?

## **Continuing Power of Attorney for Property (CPOAP)**

- Have you thought about who you would like to make financial decisions for you if you are unable to do so?
- Have you legally appointed this person as your Continuing Power of Attorney for Property?
- Do they know that you have appointed them as your Continuing Power of Attorney for Property?
- Is the contact information listed for your CPOAP current and correct?
- Is this document stored in a safe and accessible place?

## Will and Estate

- Have you thought about what you would like done with your material possessions, assets and remains after you die?
  - If this includes organ and tissue donation, have you registered your consent?
- Have you constructed a legally binding will that ensures that your wishes will be attended to?
- Have you named an executor whom you trust to ensure that your wishes are met after your death?
  - Is the contact information for your executor current and correct?
  - Is this document stored in a safe and accessible place?

# 9.

# Resources in Ontario

The unfortunate reality with regards to resources, particularly within LGBTQI2S communities, is that they are often concentrated in dense urban centres with fewer resources in rural or remote areas of Ontario. This disparity is reflected in the resources listed below, with the majority of services existing in Toronto and Ottawa.

# **Social Support Resources**

## **The 519 Church Street Community Centre**

Offers a wide range of programs and services for the LGBTQ community in Toronto, including a weekly drop-in for folks ages 50+.

P: 416-392-6874

W: [www.the519.org/](http://www.the519.org/)

E: [info@the519.org](mailto:info@the519.org)

## **SPRINT Senior Care**

Home care, health and wellness and day programs for seniors in Toronto, including an LGBT Seniors bi-weekly drop-in.

P: 416-481-6411

W: [www.sprintseniorcare.org/](http://www.sprintseniorcare.org/)

## **Senior Pride Network (SPN)**

SPN is an association of individuals, organizations, and community groups that share and interest and commitment to expanding programs and services for 50+ LGBTQ people in Toronto and throughout Canada.

W: [www.seniorpridenetwork.com/](http://www.seniorpridenetwork.com/)  
E: [sptoronto@gmail.com](mailto:sptoronto@gmail.com)

## **2 Spirited People of the 1st Nations**

2 Spirits is a non-profit social service organization whose membership consists of Aboriginal 2-Spirit gay, lesbian, intersexed, bisexual and transgender people in Toronto. “We are the only Aboriginal non-profit organization in Canada that offers these services and support to two spirited people and to all Aboriginal people living with and/or affected by HIV/AIDS”

P: 416-944-9300  
W: <http://www.2spirits.com/>

## **50+ Proud - Windsor Pride**

Social group affiliated with Windsor Pride which provides opportunities for LGBTQ seniors to engage in social networking and informational sessions.

P: 519-973-4656

E: information@windsorpride.com

W: <http://www.windsorpride.com/programs-calendar/50-proud/>

## **Spectrum Waterloo**

Offers a social support group for older LGBTQ adults and the site for the Aging with Pride Committee which promotes the needs of older LGBTQ adults through education and advocacy.

P: 226-779-9695

W: <http://ourspectrum.com/>

## Ottawa Senior Pride Network

OSPN is made up of professional service providers, representatives of LGBT community groups, and LGBT community members who are 50+. Committed to creating safe, LGBT-friendly services and residential environments and building a strong, connected, visible senior queer community in Ottawa.

W: <http://www.ospn-rfao.ca/>

E: [ospn.rfao@gmail.com](mailto:ospn.rfao@gmail.com)

## Rainbow Coffee Group

The Rainbow Coffee Group is a group for LGBTQ adults aged 55+ in Ottawa.

P: 613-236-0428 ext. 2235

W: <http://thegoodcompanions.ca/community-support-services/rainbow-coffee-club/>

# **Health Care and Mental Health Support**

## **Sherbourne Health Centre**

Toronto health centre with LGBT services that include: primary healthcare, treatment and monitoring of temporary and chronic illnesses, counselling, access to transition related services.

W: [www.sherbourne.on.ca/](http://www.sherbourne.on.ca/)

E: [torontoinfo@sherbourne.on.ca](mailto:torontoinfo@sherbourne.on.ca)

## **SPRINT Senior Care**

Home care, health and wellness and day programs for seniors in Toronto, including an LGBT Seniors bi-weekly drop-in.

P: 416-481-6411

W: [www.sprintseniorcare.org/](http://www.sprintseniorcare.org/)

## **Trans Lifeline**

Help and crisis phone line for trans people across Canada.

P: 1-877-330-6366

W: [www.translifeline.org/](http://www.translifeline.org/)

## **David Kelley**

LGBTQ counseling services based out of Family Services Toronto. Fees for individual counseling are determined on a sliding-scale basis.

P: 416-595-9618

W: [www.familyservicestoronto.org/programs/  
davidkelley.html/](http://www.familyservicestoronto.org/programs/davidkelley.html/)

## **Centretown Community Health Centre**

Offers a range of health and social support services to the Ottawa community, including counseling, primary care and programming for LGBTQ 55+ adults.

P: (613) 233-4443

W: <http://www.centretownchc.org/>

# **HIV/AIDS**

## **CATIE**

Connects people living with HIV or hepatitis C, at-risk communities, healthcare providers and community organizations with the knowledge, resources and expertise to reduce transmission and improve quality of life.

P: 1-800-263-1638

W: [www.catie.ca](http://www.catie.ca)

## **HIV & AIDS Legal Clinic Ontario (HALCO)**

HALCO is a charitable not-for-profit community-based legal clinic that provides free legal assistance to people living with HIV/AIDS in Ontario, Canada.

P: 1-888-705-8889

W: [www.halco.org](http://www.halco.org)

E: [talklaw@halco.org](mailto:talklaw@halco.org)

## **Casey House**

Toronto organization offering compassionate HIV/AIDS care and treatment including, home nursing care, street outreach, inpatient respite care, home hospice, as well as complimentary therapies and services.

P: 416-962-7600

W: [www.caseyhouse.com/](http://www.caseyhouse.com/)

E: [heart@caseyhouse.on.ca](mailto:heart@caseyhouse.on.ca)

## **Fife House**

Client-focused provider of secure and supportive affordable housing and services to people living with HIV/AIDS in the Greater Toronto Area.

P: 416-205-9888

W: [www.fifehouse.org/](http://www.fifehouse.org/)

# Housing

## **Fudger House**

City of Toronto owned long-term care facility located in the Downtown neighborhood which promotes an LGBTQ affirmative and positive environment.

P: 416-392-5252

E: [ltc-fh@toronto.ca](mailto:ltc-fh@toronto.ca)

W: <https://tinyurl.com/jyrto38>

## **Kipling Acres**

City of Toronto owned long-term care facility located in Etobicoke which promotes an LGBTQ affirmative and positive environment.

P: 416-392-2300

E: [ltc-ka@toronto.ca](mailto:ltc-ka@toronto.ca)

W: <https://tinyurl.com/z54b4gl>

## **True Davidson Acres**

City of Toronto owned long-term care facility located in the East York neighborhood which promotes an LGBTQ affirmative and positive environment.

P: 416-392-0400

E: ltc-tda@toronto.ca

W: <https://tinyurl.com/glm47zn>

## **Carefree Lodge**

City of Toronto owned long-term care facility located in North York which promotes an LGBT-friendly and accepting environment.

P: 416-397-1500

E: ltc-cfl@toronto.ca

W: <https://tinyurl.com/ha7xfs2>

# Legal

## **HIV & AIDS Legal Clinic Ontario (HALCO)**

HALCO is a charitable not-for-profit community-based legal clinic that provides free legal assistance to people living with HIV/AIDS in Ontario, Canada.

P: 1-888-705-8889

W: [www.halco.org](http://www.halco.org)

E: [talklaw@halco.org](mailto:talklaw@halco.org)

## **Queens Elder Law Clinic**

Provides free legal services to seniors in southeastern Ontario who would otherwise be unable to afford legal services. Runs out of Queens University in Kingston. \*Does not formally promote LGBTQ inclusivity.

P: 613-533-2102

W: <http://www.queenslawclinics.ca/elder/>

## **Advocacy Centre for the Elderly (ACE)**

ACE is a Toronto based organization which provides direct legal services to low-income seniors, public legal education, and engages in law reform activities. ACE services and activities are in relation to areas of law of special importance to the seniors' population. \*Does not formally promote LGBTQ inclusivity.

P: 1-855-598-2656

W: <http://www.advocacycentreelderly.org/>

## **ARCH Disability Law Centre**

ARCH provides a range of legal services to people with disabilities who live in Ontario, disability advocacy organizations, and the legal profession. \*Does not formally promote LGBTQ inclusivity.

P: 1-866-482-2724

E: [archlib@lao.on.ca](mailto:archlib@lao.on.ca)

W: <http://www.archdisabilitylaw.ca/>

## **Law Society of Upper Canada – Legal Referral Service**

Free legal referral service. Through online request, folks can be referred to a lawyer or paralegal who will provide up to 30 minutes of free legal advice.

*\*Does not formally promote LGBTQ inclusivity.*

W: <https://lsrs.lsuc.on.ca/lsrs/>

## Faith-Based Support

### El-Tawhid Juma Circle Mosques

Offers resources for accessing and starting Human Positive mosques.

W: <http://www.jumacircle.com/>

### Affirmation: LGBT Mormons Families & Friends

International organization focused on promoting connectivity within the Mormon LGBT community.

W: <http://www.affirmation.org/>

### Dignity Canada

National Roman Catholic collective concerned with LGBTQ rights.

W: <http://www.dignitycanada.org/>

### Evangelicals Concerned

National Evangelical collective concerned with LGBTQ rights.

W: <http://www.ecwr.org/>

## **Lutherans Concerned**

National Lutheran collective concerned with LGBTQ rights.

W: <http://www.lcna.org/>

## **Integrity Canada**

National Anglican collective concerned with LGBTQ rights.

W: <http://www.integritycanada.org/>

## **Brethren Mennonite Council for LGBT Interests**

National Mennonite council focused on LGBT interests.

W: <http://www.bmclgbt.org/>

## **World Congress of GLBT Jews**

International congress focused on the rights of GLBT Jewish global citizens.

W: <http://www.glbsjews.org/>

E: [archlib@lao.on.ca](mailto:archlib@lao.on.ca)

W: <http://www.archdisabilitylaw.ca/>

9. Resources in Ontario

## Crossing the Rainbow Bridge

# Crossing the Rainbow Bridge

