RBC WEALTH MANAGEMENT CANADA

VOLUME 2, ISSUE 2

PERSPECTIVES

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM **RBC WEALTH MANAGEMENT SERVICES**

Planning Ahead for Your Family's Future

- **Passing on your personal effects while minimizing family conflict**
- **Managing your extra tax obligations as a U.S. citizen living in Canada**
- **Avoiding one of the most common mistakes that investors make**

From the Desk of the CEO

The arrival of autumn often brings a sense of renewed vigor for many as they see the change of seasons as an opportunity to prepare for the year ahead. This issue of *Perspectives* features articles that explore wealth management planning strategies and tactics to help you protect and enhance your family's wealth today and in years to come.

A comprehensive wealth management plan can play a fundamental role in helping you grow and preserve your wealth and transition your financial legacy to future generations. Articles in this issue highlight the key elements in building an effective wealth management plan and how the use of credit within a wealth plan can help you optimize your cash flows and realize important long-term investment goals.

A critical component of any wealth management plan is having an up-to-date estate plan that reflects your personal and financial situation, as this can help you ensure that your loved ones are taken care of both during your lifetime and after death. The articles on estate planning inside this issue look at how a well-structured estate plan can incorporate customized solutions for the benefit of a person with a disability, how to plan for the distribution of your personal items to beneficiaries after death, and cross-border planning strategies that can help you maximize the value of your estate.

This issue also touches on the influence that our emotions can have on our portfolio decisions, particularly in times of uncertainty, and how employing a disciplined approach can minimize its effect to prevent it from jeopardizing our investment goals.

Finally, make sure to read the article to learn how the RBC Run for the Kids, which took place in Toronto September 21-22, raised funds to support the Sunnybrook's *Family Navigation Project*, a program to help families affected by youth mental health issues.

As always, I encourage you to contact your RBC Wealth Management advisor to discuss how the strategies featured in this issue can help you achieve your wealth management planning objectives.

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RBC Wealth Management

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When contemplating your estate plan, it is easy to overlook the distribution of your personal items.

Planning Ahead for Your Personal Treasures

While it's somewhat easy to distribute financial assets to beneficiaries at death, it's much more difficult to give away personal items such as classic cars, coins, stamps, fine art, wine or jewellery. Part of the difficulty lies in valuing the items, and part lies in the emotional attachment that family members might have towards the personal property. To save the potential expense and time delays of investigating and resolving disputes, give these items special consideration when you draft your estate plan.

Know the Value of Your Property

If you own antiques, jewellery or other collectibles, consider hiring a professional appraiser as it can be difficult to establish the value of such items and the market for some specialist items may be limited.

"We have a lot of clients who want to treat their children equally in their Will, but they have no idea how much their personal assets are worth," says Ilana Lipkin, Financial Advisory Consultant, RBC Wealth Management Services. "Professional appraisers can answer the question fairly easily."

An accurate valuation during your lifetime is helpful for a number of reasons:

- You will find it easier to decide what to leave to whom in your Will.
- You will know what value to use for insurance coverage purposes.
- If you plan to donate some of this property to charity, you will know the value of that donation and the potential tax credit you will receive on the donation.
- If you think your estate will need liquidity, you will know which assets to sell to raise the money.
- You will be able to obtain professional advice on the potential tax implications of gifting or selling your personal property.

Once you know the value of your assets, you can determine the best way to incorporate your personal property into your estate plan.

Dividing Personal Effects

Even if you know the dollar value of all your assets, it can be difficult to choose the beneficiaries for your treasured possessions. Some possessions will have monetary value, some will have sentimental value, and some will have both. However, if you don't provide clear direction about who gets what, or if you don't give your executor (called a liquidator in Quebec) appropriate discretion as to the distribution of particular assets, your executor may have to obtain legal advice to assist in interpreting your Will and clear up disputes between beneficiaries. This can cause delays and create expenses that will shrink your estate.

When choosing an heir, remember that the next generation of your family may not prize your collection the way you do. Are there individuals who will maintain it, care for it and enjoy it, or do you wish to sell it or donate it to a specialist or charitable organization for the benefit of other enthusiasts? Advance planning can be invaluable.

Another alternative may be to make some lifetime gifts or sell part of your collection, as you deem appropriate. If you identify a favourable time in the market for your area of interest, you may think it prudent to dispose of some of your collection. This can be a valuable choice and one that could add necessary liquidity to your estate. There is no right or wrong approach, simply alternatives that work for you.

Taxation of Personal-Use Property

For tax purposes, you are deemed to have disposed of your assets immediately before your death at their fair market value. Tax-deferral opportunities are available in certain circumstances. If, for example, you leave personal assets to your spouse, the tax liability on those assets can be deferred until the surviving spouse passes away. However, if you are the last surviving spouse or you choose to leave assets to a non-spouse, you may incur a capital gain or loss on your personal property.

Your personal property is divided into different categories for tax purposes. For example, personal-use property, used mainly for your personal use and enjoyment, includes your furniture, cars and boats. The Income Tax Act also provides for a special class of personal-use property called "listed personal property" that includes items that generally increase in value, such as art, jewellery, books, stamps and coins.

In the case of personal-use property, your executor will not be able to use losses realized on this property to offset your capital gains. However, if you incur a gain on listed personal property, it can be offset by a loss you realize on your listed personal property. Such a loss on listed personal property cannot be used to offset any other type of gain. Your tax professional can advise you on how these rules could affect your estate.

Family disharmony is frequently caused by concern over the potential tax consequences of passing valuable collectibles to the next generation and the possibility of inequality. Some collectors do not realize the value of their collections and fail to make specific provision in their Wills. Other individuals know the value of their property and the potential tax liability and omit it from their Wills, fearing the tax bill that may result if the assets pass through their estate. It is important to realize that your executor can be held liable for tax that is not reported by your estate. The tax rules are complex and can result in an income tax liability whether you gift assets during your lifetime or on your death. Professional advice is key to helping you make informed decisions.

Donating Property to Charity

If you wish to donate personal property to charity, such as jewellery, art or furniture, you should obtain professional tax advice on the potential tax consequences as the disposition of these items may trigger a taxable capital gain that would be included in your income in the year of the gift. You, or your executor, may be able to claim a non-refundable charitable tax credit for the amount of the gift. The tax credit is normally based on the fair market value of the donated property, so obtain one or more independent professional appraisals if you are considering donating valuable items. Ensure that the charitable organization you have in mind is willing to accept the property you wish to donate, before you make a lifetime gift or include instructions for your donation in your Will.

Special rules apply if you sell or donate "certified cultural property" to an institution or public authority designated by the Minister of Canadian Heritage. This kind of property includes works of art, sculptures, books and manuscripts that are culturally significant and certified as cultural property by the Canadian Cultural Property Export Review Board. You do not have to report a capital gain when you donate this kind of property to a designated institution but if you realize a capital loss on listed personal property, you can use the loss to reduce capital gains you realize on other listed personal property. Talk to your tax and legal professionals about donating property of this kind and check that your Will contains the wording appropriate to convey your property to your chosen recipient.

Forward Planning for a Smooth Transition

To avoid delays, disagreements and potential issues of inequality, it's best to communicate with your beneficiaries during your lifetime to let everyone know your plans. Document the arrangements if you can, for even greater clarity. In the event that an unexpected increase in value causes inequality, you can pre-empt conflict by leaving instructions on how to resolve this. Your legal professional may be able to suggest alternative courses of action. For example, a portion of the collection could be sold, according to pre-arranged criteria, to discharge liabilities or restore equality.

In the absence of clear instructions, your executor will have the task of locating and valuing your personal property at the expense of your estate. These items must also be safely stored and insured until they can be distributed or sold, depending on the terms of your Will. Your executor will need to have access to records including all the details needed to authenticate the property, ownership documentation, professional appraisals and insurance arrangements. The more work you do during your lifetime to provide information about your collection, the less time and expense will be involved for your executor.

Making Plans for Your Treasured Possessions

Enjoy your valuable personal property and the collectibles to which you have devoted time and resources. Let them enrich your life but remember to make plans for passing them on to the next generation of owners and collectors. Provide your executors and heirs with the information they will need to carry out your wishes. They may not have your specialist knowledge and experience so make detailed plans to help avoid unnecessary delays and expenditure for your estate and enlist the help of professional advisors to make the transition as smooth as possible.

Leaving Behind Plenty of Information

Here is a list of things you should prepare and store with your Will that will help simplify the administration of your estate:

- ✓ An inventory of all of your personal property and where all the items can be found
- ✓ Original purchase documents and receipts, if available
- ✓ Certificates of authenticity, if applicable
- ✓ The latest appraisal for each item
- ✓ Names and contact information of your preferred professional appraisers
- ✓ Insurance policies pertaining to all personal property
- ✓ Tips on how the items should be safely transported and stored
- ✓ A list of specialist packers and movers

Planning for Collectibles with Special Requirements

When making arrangements for certain personal property in your estate plan, a few additional considerations come to mind.

Some personal property may need special handling. Consider cars, for example. From an estate administration perspective, your executor will need to arrange for the valuation and storage of your motor vehicles as well as maintaining appropriate insurance coverage. Your vehicles can then be distributed to your beneficiaries or sold, according to your wishes. As you might expect, your executor must comply with the requirements of your provincial government's motor vehicle department when transferring the ownership of vehicles.

However, if you are a classic car collector, for example, there's another layer of complexity. Will your heirs inherit them or will your collection be sold and the proceeds flow into your estate? Who will perform the valuation? You may be able to reduce unnecessary expenditure and delays by keeping the valuation up-to-date and advising your executor of the location of the relevant paperwork. Many car collectors give considerable thought to passing on their collection. This includes particulars of how it will be valued, stored, insured and moved. So provide detailed instructions for your executor and inform your heirs of your intentions, beforehand if appropriate.

If you're a wine collector, keep an inventory of your collection and document each acquisition and disposition, if possible. Maintain up-to-date professional valuations and specialist insurance coverage. Don't assume that your executor knows the value of the collection. Prepare instructions as to the whereabouts of the relevant documents and set up a detailed plan for disposing of the collection including professional appraisers, auctioneers, and specialist packers and movers.

If you own valuable works of art, many of the above factors are equally relevant to you. Professional appraisal and advisory firms can offer a wide range of services. They can coordinate the authentication and valuation of your collection, provide document preparation services, manage the sale, auction, donation or gifting of your property, as necessary, together with delivery and insurance considerations. They can also facilitate inventory, restoration and installation services, depending on your needs and those of your executors and heirs.

Other items of personal property may have specific registration and licensing requirements. For example, if your estate involves a gun collection, familiarize yourself with the RCMP's fact sheet on inherited firearms. This document provides guidance as to who can inherit property of this kind and how it can be transferred, licensed, transported, stored and registered. More information is available at www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/will-testament-eng.htm.

Rethinking Credit as a Convenient Way to Access Your Wealth

Borrowing strategically, as part of a comprehensive wealth financial plan, can help you optimize your cash flows and realize important long-term investment goals, among other benefits. While borrowing carries risk if not done prudently, borrowing in the context of a customized credit strategy offers the potential to help you reach your goals more efficiently. Depending on your goals and the nature of your portfolio, you may have the choice of several liquidity solutions. To employ these solutions, it's essential to work with a team that looks at credit in the broader context of wealth management in order to achieve the most benefit from the use of credit in your plan.

Like many private investors, you may have a high percentage of your wealth committed to fixed assets and long-term investments. Credit may allow you to access the funds you need quickly and easily whether it's to meet unexpected expenses, take advantage of new opportunities or simply enjoy your lifestyle.

Use Credit Strategies to Help Achieve Wealth Planning Objectives

When used appropriately, credit may enhance your financial plan to help you more effectively achieve your financial goals. For example, if you choose to borrow to finance a purchase instead of liquidating a high-yielding asset to purchase it with cash, you may benefit from smoother cash flow and avoid potential tax consequences. The following strategies are some of the ways that credit may help you achieve your wealth planning objectives.

Optimize Cash Flows and Income

Credit can be a useful tool for you to optimize your cash flows and income by:

- Smoothing out cyclical cash flow patterns
- Achieving life and family goals
- Maintaining liquidity for unforeseen events without depleting cash reserves

If your income comes from a large, one-time bonus, company dividend or other intermittent payments, you may find yourself dipping into cash reserves, selling securities to meet unexpected expenses or using expensive credit card debt. Using these funding sources can be very inefficient and inconvenient. If this is your situation, you may consider using a margin account, secured loan or line of credit to help keep your financial goals on track. By matching the time horizon of your credit facility with your expected income, you can potentially smooth out your cash flow over time.

Clearly, there are risks associated with this strategy and you will want to discuss these with your wealth advisor before you make any decisions. For example, consider whether your year-end bonus or dividend payment could be less than you anticipate. Is it worth waiting to make the lifestyle purchase that you are planning to make or are you comfortable in assuming the risk? It also is possible that current tax deductions may not be available in future, so you will want to discuss these carefully with your tax advisor before you make a decision to borrow.

Finance Purchases of Assets

Even if you have sufficient cash to fund an investment opportunity or a luxury purchase, using credit to finance the purchase may make more sense. Borrowing at a low cost for purchases versus selling earning assets can be a prudent financial strategy.

For example, let's examine this possible scenario: You have been looking to purchase a second home but your capital is parked in other investments to take advantage of the rate of return. The perfect buying opportunity arises, but you are unable or unwilling to quickly liquidate your investments at the current market rates. You may wish to avoid selling other assets to fund this purchase as such a sale could trigger potential capital gains tax and disrupt your carefully crafted investment plan. Instead, a margin account or secured loan may provide you with the financing that you need at relatively favourable rates.

Clearly, the interest rate that you pay on the loan will be a critical consideration when calculating whether to sell assets or borrow against those assets to fund your purchase. In addition, you will need to consider the risk that the assets against which you secure your loan may decline in value. Make sure that you discuss all potential scenarios with your planning and tax advisors so that you fully understand the pros and cons of using credit before you make the decision to borrow to fund your purchase. If you can establish that your return on the investment is likely to be higher than the cost of the loan, then such a strategy may make good sense.

Use Credit Wisely

Credit can be a valuable and powerful tool to help you deal with unforeseen life events or to help you accomplish your goals. In cases where your investment assets are used as collateral, it's important to consider that certain securities tend to fluctuate more in value than others. It's also important to factor in general market volatility. As a result, you should always maintain a substantial cushion between the amount you borrow and the value of your securities. This helps protect against having to deposit funds and/or sell securities in the event of market declines. Explore credit strategies with your wealth advisory team to determine if any are right for you.

Credit strategies that include borrowing against your investment assets may not be suitable for all investors as borrowing on margin (using securities as collateral) involves certain risks. If the securities in your account decline in value, so does the value of the collateral supporting your loan. If you do not have a sufficient cushion, the firm may issue a "margin call" requiring you to deposit additional assets into your account, and/or sell securities or other assets in any of your accounts, in order to maintain the required equity in the account.

Credit Is a Valuable Tool

Rather than selling investments in your portfolio, and potentially disrupting your long-term investment goals, credit enables you to borrow money for your personal needs against your portfolio that you already own. For example, you may consider using credit to:

- Purchase a vacation home
- Purchase property in another country
- Finance a start-up company
- Meet any bridge financing requirements
- Refinance and consolidate higher-cost debt
- Refurbish commercial real estate
- Achieve an estate planning solution
- Pay college tuition
- Add to art, wine and other collections
- Acquire a boat or aircraft
- Pay golf club initiation fees
- Purchase exotic or vintage cars

Estate Planning for U.S. Citizens in Canada

Many individuals may not be aware of their U.S. citizenship status. If you were born in the U.S. or to U.S. citizen parents, the fact that you do not have a U.S. passport or that you never lived or worked in the U.S. does not mean you are not a U.S. citizen and are exempt from U.S. tax obligations.

If you were born in the U.S., you are automatically a U.S. citizen. If you were born outside the U.S. to U.S.-citizen parents or your parents are naturalized U.S. citizens, you must refer to U.S. citizenship laws in effect at the time of your birth to determine if you are a U.S. citizen. Even if only one of your parents is a U.S. citizen, you may have obtained U.S. citizenship under the laws at the time of your birth. If you are unsure, you should contact a legal counsel who can review your situation and advise you accordingly.

U.S. Transfer Tax and Canadian Income Tax Systems

When considering which cross-border estate and trust planning strategies may be appropriate, it is important to have an understanding of the Canadian and U.S. estate and income tax systems that may affect the type of planning chosen.

Canadian Income Tax

Canada does not have an estate or gift tax system; however, assets transferred by way of gifts made during your lifetime or bequests made upon your death may be subject to Canadian "deemed disposition" rules contained in the Canadian Income Tax Act. These rules require you to include into income any net capital gains (gains less losses) triggered on capital property you own as if you sold the property on the date of death or on the date it was gifted.

Transfers to a spouse either directly or to a Canadian qualified spousal trust through your Will are exempt from these rules and may be transferred at the asset's original cost. In addition to the deemed disposition rules, income earned on lifetime gifts to a spouse or minor child or grandchild may trigger the Canadian "income attribution" rules that requires the transferor to pay Canadian income tax on that income.

The United States may impose U.S. estate tax, U.S. gift tax and U.S. generation-skipping transfer tax (GSTT), collectively known as the U.S. transfer tax system, on U.S. citizens no matter where in the world they reside. As a result, estate planning for U.S. citizens in Canada may be more complex since both Canadian and U.S. estate and income tax laws must be considered.

United States Transfer Tax

The U.S. transfer tax system (gift, estate and GSTT) applies to U.S. citizens (and in some cases non-U.S. citizens) who transfer assets by way of lifetime gifts or bequests made upon their death.

U.S. gift tax may apply to donors who gift property during their lifetime if the value exceeds the annual exclusion amounts (i.e. for 2013, US $14,000 for gifts to anyone and US $143,000 for gifts to a non-U.S. citizen spouse). An unlimited amount of gifts may be made to a U.S. citizen spouse without triggering U.S. gift tax.

Note: for U.S. citizens, gifts of any type of property transferred may trigger U.S. gift tax, however, for non-U.S. citizens, only gifts of U.S. tangible property may trigger it. U.S. tangible property is generally property that is physically located in the U.S. such as U.S. real estate and cars, boats, jewelry and cash physically located in the U.S. For U.S. citizens only, there is a lifetime gift tax exemption (US $5.25 million for 2013) that may be used to eliminate U.S. gift tax on taxable gifts. However, the use of this lifetime exemption reduces their U.S. estate tax exemption dollar for dollar.

U.S. estate tax may apply on the fair market value of assets owned upon your death. Every U.S. citizen is entitled to a unified credit for 2013 of US $2,045,800 against U.S. estate tax, which translates to a U.S. estate tax exemption of US $5.25 million. Therefore, U.S. estate tax only applies to U.S. citizens where the value of their estate exceeds the exemption. For non-U.S. citizens, U.S. estate tax may apply only if they die owning U.S. situs assets (assets which have a U.S. connection or location, for example shares in a U.S. corporation, U.S. real estate or cash on account in a U.S. brokerage) valued at more than US $60,000 and their worldwide asset value exceeds US $5.25 million. This is because non-U.S. citizens are entitled to a prorated unified credit based on the ratio of the value of their U.S. situs assets to their worldwide estate.

GSTT may apply to taxable gifts or bequests made by U.S. citizens or non-U.S. citizens to “skip individuals” (e.g. grandchildren, great grandchildren and more distant descendants). For non-U.S. citizens, only taxable gifts or bequests of U.S. tangible property may be subject to GSTT. GSTT may apply in addition to U.S. estate or gift tax. A GSTT exemption of US $5.25 million may be used by U.S. citizens and non-U.S. citizens for taxable transfers made during their lifetime or after their death.

U.S. estate and gift tax for 2013 is based on graduated tax rates with a maximum rate of 40% that is reached when the value of taxable gifts or estate exceeds US $1 million. GSTT is levied at a flat tax rate equal to the highest marginal estate or gift tax rate in that year (40% starting in 2013).

Common Estate Planning Strategies for U.S. Citizens in Canada

The following table summarizes the common cross-border estate, Will and trust planning strategies that U.S. citizens in Canada may use to defer, reduce or potentially eliminate U.S. gift tax, estate tax or GSTT.

	For each spouse where both are U.S. citizens	For a U.S. citizen spouse where a non-U.S. citizen spouse may be the survivor	For a non-U.S. citizen spouse where the U.S. citizen spouse may be the survivor
Portability provisions	√		
Credit Shelter Trust (CST)	√	√	
Lifetime gifts	√	√	√
Dynasty Trust	√	√	√
Irrevocable Life Insurance Trust (ILIT)	√	√	√
Charitable donation	√	√	√
Marital credit		√	
Qualified Domestic Trust (QDOT)		√	
Canadian qualified testamentary spousal trust	√	√	√

Portability Provisions

Portability provisions became effective 2011, allowing a surviving U.S. citizen spouse to use their deceased spouse's unused U.S. estate or gift tax exemption, as well as their own. The provisions are available only to couples where both are U.S. citizens and only when an election is made on the U.S. estate tax return of the first spouse to die.

For a spouse who dies in 2013, the portability provisions provide the surviving U.S. citizen spouse with the potential to transfer up to US $10.50 million of wealth to their beneficiaries (i.e. US $5.25 million of their predeceased spouse's unused lifetime gift or estate tax exemption and another US $5.25 million of their own exemption). The unused exemptions cannot be used to make gifts or bequests to skip individuals.

Credit Shelter Trust (CST)

A Credit Shelter Trust (CST), also known as a "bypass trust" or "A/B trust", is a special type of irrevocable testamentary trust established by U.S. citizens through their Will in order to protect assets transferred in and any future growth from U.S. estate tax. The beneficiaries, who may include your spouse, children and/or grandchildren, will have limited access to the capital of the trust. Income earned in the trust may be paid to a beneficiary; however, distributions of capital are permitted only for health, education, support and maintenance (referred to as "ascertainable standards").

The value of assets up to the deceased U.S. citizen spouse's U.S. estate tax exemption may be transferred to the CST free of U.S. estate tax. Any remaining assets may be transferred to a surviving spouse directly or to a properly structured spousal trust. If the surviving spouse is a U.S. citizen an unlimited marital deduction may be used to transfer the assets free of U.S. estate tax. However, where the surviving spouse is not a U.S. citizen the marital credit or a Qualified Domestic Trust (QDOT), which are discussed next may be used.

Marital Credit

The marital credit may be claimed by a U.S. citizen or a non-U.S. citizen spouse who transfers assets upon their death to a non-U.S. citizen spouse directly or to spousal trust. By claiming the marital credit, approximately US $10.36 million in assets may be transferred free of U.S. estate tax to the surviving spouse directly or to a spousal trust: US $5.25 million that can be transferred using the maximum unified credit of US $2,045,800, and another US $5.11 million (i.e. US $2,045,800 divided by 40% maximum U.S. Estate Tax rate) that can be transferred using the marital credit.

Qualified Domestic Trust (QDOT)

A Qualified Domestic Trust (QDOT) is a type of trust that may be implemented to transfer assets to your surviving non-U.S. citizen spouse upon your death to defer U.S. estate tax by permitting an unlimited marital deduction. Your spouse must be the sole beneficiary of the trust.

If you decide to claim the martial credit you cannot transfer any assets to a QDOT. Since it is possible to eliminate U.S. estate tax on assets of up to US $10.36 million by claiming your U.S. estate tax exemption and the marital credit, the QDOT is generally considered only if the value of your estate exceeds this amount.

The deferral of U.S. estate tax lasts until there are distributions of capital from the trust or the surviving spouse dies. The U.S. estate tax payable at this time is calculated based on the tax rates that existed in the year the deferral was made (i.e. the year the U.S. citizen spouse died).

Lifetime Gifts

U.S. and non-U.S. citizens may consider gifting assets before death in order to minimize or eliminate their exposure to U.S. estate tax. Before making a gift, consider whether you will trigger U.S. gift tax or GSTT or the Canadian deemed disposition and income attribution rules. For Canadian tax purposes there is a deemed disposition on gifts made to anyone other than a spouse and the income attribution rules may apply to future income and capital gains realized on gifts made to your spouse and to children and grandchildren who are minors.

Common gifting strategies for U.S. citizens with assets that exceed US $5.25 million include making annual gifts to children, grandchildren and to a non-U.S. citizen spouse that do not exceed the annual exclusions (i.e. US $14,000 for children and grandchildren and US $143, 000 to a non-U.S. citizen spouse).

Since a non-U.S. citizen spouse is subject to U.S. estate tax on U.S. situs assets only, it may be appropriate to make gifts of U.S. situs assets and to receive gifts of non-U.S. situs assets first. Keep in mind that a gift of U.S. situs asset that is a tangible U.S. property will be subject to U.S. gift tax if the value exceeds the annual thresholds.

Where both spouses are U.S. citizens gift splitting may be used, where one U.S. citizen spouse funds the entire amount of the gift (i.e. US $28,000) with their assets; however, each U.S. citizen spouse is treated as having made one half of the gift (i.e. US $14,000), which is within the annual exclusion amount.

U.S. citizens can also make direct payments on behalf of children and grandchildren to educational organizations for tuition expenses (e.g. college tuition), or to healthcare providers for medical services (e.g. braces for teeth). These payments may exceed the annual exclusion amounts since they are not considered to be gifts.

Since outright gifts received by your beneficiaries may be exposed to U.S. estate tax in their hands and you may not be comfortable with the idea of making larger outright gifts and giving up control of a significant portion of your wealth, you may consider making gifts to a "Dynasty Trust."

Dynasty Trust

A Dynasty Trust (sometimes referred to as a Generation-Skipping Transfer Trust) is a special type of irrevocable trust that maximizes the amount of wealth that can be transferred from generation to generation without exposing it and any future growth to U.S. estate tax.

A Dynasty Trust can be created during your lifetime as an inter-vivos trust or as a testamentary trust by including provisions in your Will to create one upon your death. U.S. gift tax, estate tax or GSTT may be triggered on gifts or bequests made to a Dynasty Trust unless you can mitigate or eliminate the tax through the use of your lifetime gift tax exemption or the annual gift tax exclusions.

It is imperative that a Dynasty Trust be structured properly. Speak to your cross-border tax or legal advisor regarding the appropriateness of using a Dynasty Trust in your estate planning.

Irrevocable Life Insurance Trust (ILIT)

U.S. and non-U.S. citizens who own a life insurance policy outright or have "incidents of ownership" in the policy are required to include the death benefit on the policy in their worldwide estate for the purpose of determining U.S. estate tax. "Incidents of ownership" may include having the ability to name or change beneficiaries, borrow against the policy, access the cash value and assign or cancel it. An Irrevocable Life Insurance Trust (ILIT) is an inter-vivos trust established to hold ownership of the insurance policy in order to minimize your exposure to U.S. estate tax, which you may have otherwise created or increased as a result of owning a life insurance policy outright.

There may be potential Canadian and U.S. income tax, U.S. transfer tax and U.S. excise tax issues to consider when U.S. citizens own Canadian life insurance policies or establish and fund an ILIT. Therefore, it is important to contact a cross-border tax or legal advisor for advice. They will help you evaluate whether a reduction of your exposure to U.S. estate tax using an ILIT outweighs the costs of setting one up and the annual fees associated with maintaining it.

Canadian Qualified Testamentary Spousal Trust

A Canadian qualified testamentary spousal trust is a special type of Canadian spousal trust set up through your Will for your surviving spouse, which may protect assets transferred and future growth from U.S. estate tax while enjoying beneficial Canadian taxation.

When structured properly there is an exemption from the Canadian deemed disposition rules that would otherwise apply when assets are transferred to the trust and every 21 years of the trust's existence. Although no other person but the surviving spouse may be a beneficiary of the trust and may obtain use of any of the capital of the trust during their lifetime, restrictions can be imposed on the surviving spouse's ability to access the capital of the trust in order to preserve it for the benefit of other beneficiaries such as children and grandchildren.

The assets transferred to the trust and future growth may be protected from U.S. estate tax provided the access to the capital of the trust is limited to payments for ascertainable standards for health, education, support and maintenance.

As a testamentary trust Canadian taxation is based on graduated tax rates instead of the top marginal tax rate. However, the 2013 federal budget announced the government's intention to consult on possible measures to eliminate the tax benefits that arise from taxing testamentary trusts at graduated rates. This arises from a concern with potential growth in the tax-motivated use of testamentary trusts and the associated negative impact on the tax base. A consultation paper has been publicly released to provide stakeholders with an opportunity for comment.

Charitable Donations

Charitable donations during your lifetime or through your Will may reduce your exposure to U.S. estate tax.

U.S. citizens can make charitable gifts (which are not subject to U.S. gift tax and reduce the amount of assets in their estate) or charitable bequests (which can be deducted in calculating their U.S. estate tax liability). The charitable gifts or bequests must be made to qualified U.S. or foreign charities. The same benefits may be achieved by non-U.S. citizens except they must make gifts or bequests of U.S. situs assets only and they can only be made to U.S. qualified charities.

Planning for the Future

Estate planning for U.S. citizens in Canada must take into consideration both Canadian and U.S. tax and estate laws. When some of your family members are not U.S. citizens, the planning is more complex. This article has presented some of the common cross-border estate, Will and trust planning strategies that may be considered in reducing one's exposure to U.S. estate tax. However, this article is for information purposes only and does not provide tax or legal advice. The U.S. estate and income tax information provided is for U.S. federal purposes only and does not address U.S. state specific issues. Although many of the rules and strategies can apply to U.S. green-card holders and U.S. residents, this article does not specifically address planning for these individuals. It is imperative that you obtain professional advice from a qualified tax or legal advisor specializing in cross-border tax and estate planning before you act on any of the information provided. This will ensure that your own circumstances have been considered properly and that action is taken on the latest information available.

Structuring your estate plan to provide for a beneficiary with a disability can pose a number of unique challenges.

Estate Planning for Beneficiaries with Disabilities

It is essential to have an estate plan that reflects your personal and financial situation and you should keep it up-to-date as your circumstances change. Safeguarding the interests of a spouse, children and other family members is generally a priority when you sit down with your legal counsel to talk about your estate plan. You want to ensure the well-being of loved ones both now, during your lifetime and after death.

A well-designed estate plan can give you peace of mind knowing that the assets you worked hard to accumulate will pass to your heirs as you intend. It can also incorporate customized solutions that cater to the specific needs of friends and family members. This can be particularly important when you wish to benefit a person with a disability.

A major concern when planning for the benefit of a person with a disability is the financial well-being of the individual. Knowing your beneficiary's sources of income and whether they are receiving government disability benefits will heavily influence how you should structure your estate plan.

Will Receiving an Inheritance Affect My Beneficiary's Government Benefits?

What happens after a financial supporter's death depends on how the inheritance is passed on to the beneficiary. Provincial governments generally set limits on the assets an individual can own and the annual income they can earn while in receipt of government disability benefits. However, there are ways to structure an inheritance that may help to mitigate the impact of these limits.

The following examples are some common ways to structure an inheritance and some of the considerations you should keep in mind when choosing a particular structure.

Outright Gift

If you are thinking of making an outright gift, it is worth noting that certain types of assets may be exempt for the purposes of determining whether your beneficiary will be eligible for government benefits. For example, depending on where your beneficiary lives, the gift of a property to be used as a primary residence or a car to be used as the beneficiary's primary vehicle may be considered exempt assets.

On the other hand, if you are thinking about giving cash to a beneficiary, the gift may be considered exempt if it is used to purchase pre-approved disability-related items and services.

There are a number of ways you can structure your beneficiary's inheritance and you are not limited to using just one.

Life Insurance Proceeds

If you want to name an individual with a disability as a beneficiary on your life insurance policy, be aware that many provincial government programs limit the funds that can be received from the proceeds of life insurance. Some jurisdictions place a lifetime limit on the combined funds that can be received from trusts and life insurance policies. Funds that exceed these limits may jeopardize your beneficiary's entitlement to income support and other benefits.

Funds Held in a Trust

Provincial government disability support plans often allow recipients to receive funds in trust, up to certain limits, or to place funds they receive in a trust within a set period of time. The capital value of such funds, and the investment income they produce, may be considered exempt while they remain in the trust and within the allowable limits. However, depending on the income support program in question, the funds may count towards your beneficiary's allowable annual income when they are withdrawn from the trust. Bear this in mind if you are contemplating placing funds in trust.

The taxation of trust assets and the potential consequences for your beneficiary can be a significant factor when you're designing your estate plan. The trust structure may allow you to specify how you wish the assets to be managed, who will manage them and when and how they will be distributed.

This often helps to fulfil your wish to provide financial security for your beneficiary. It can also provide positive tax consequences, such as income splitting. Be sure to discuss your beneficiary's lifestyle and their future requirements with your legal counsel. This will help you decide how to structure the trust to give your beneficiaries access to income and capital when they need it in a tax-efficient manner and without jeopardizing their government benefits.

Absolute Discretionary or "Henson" Trusts

Henson trusts are a kind of discretionary trust which gives the trustee absolute discretion over the trust assets and does not require the trustee to make payments of either income or capital to the beneficiary. It can be set up either during your lifetime or under the terms of your Will.

Subject to the terms of specific provincial government programs, assets held in this kind of trust may be considered exempt and it may be possible to exceed the asset limits that apply to other kinds of trusts. This may allow assets to grow in the Henson trust without jeopardizing the beneficiary's government benefits. However, if the trustee chooses to make a payment for, or on behalf of the beneficiary, the income received from the trust may not be considered exempt. Refer to the terms of the program affecting your beneficiary as it may be possible for trust income paid out of the trust to remain exempt if it is used for specific authorized purposes, like the purchase of disability-related items or to make a contribution to a Registered Disability Savings Plan (RDSP). Your legal professional can advise you on how to ensure that a trust qualifies as an absolute discretionary trust.

Registered Disability Savings Plan (RDSP)

In most provinces, funds held in an RDSP are exempt or partially exempt as income and/or assets for the purpose of determining eligibility for government disability benefits.

An RDSP can be a valuable part of your estate plan if you're planning for a disabled beneficiary. Government grant and bond monies may also be available, depending on the beneficiary's age and net family income, to supplement contributions to the RDSP. However, there are many rules governing the operation of RDSPs, including the possibility that government grant and bond monies could be lost, depending on how and when withdrawals are made from the plan. Consider when your beneficiary is likely to need income in the future and talk to your wealth advisor about whether an RDSP will provide your beneficiary with sufficient access to the funds they require.

RRSP/RRIF Assets

If you wish to benefit a child or grandchild who has a physical or mental disability and is financially dependent upon you, consider designating that individual as the beneficiary of your RRSP/RRIF. Your child or grandchild may be able to roll those assets over to their RRSP/RRIF on a tax-deferred basis, regardless of their age. These assets will not pass through your estate under the terms of your Will, so they will not be included in the calculation of probate fees.

Assets held in RRSPs/RRIFs may not be considered exempt assets for the purposes of preserving your beneficiary's entitlement to provincial government disability benefits. If this is a concern for your beneficiary, there is a possible solution. It is possible to roll the proceeds of a deceased individual's RRSP/RRIF into the RDSP of the deceased person's financially dependent child or grandchild. The benefit of this, as mentioned earlier, is that assets held in an RDSP and income received from an RDSP may be considered exempt for the purpose of preserving government benefits. The beneficiary can "shelter" contributions of up to $200,000 in the RDSP in addition to the investment income and capital gains that are generated inside the plan.

When Government Benefits Are Not Needed

If there are enough assets in the family to support an individual with a disability for the rest of his or her life, and government benefits are not a priority, then the limits don't matter. In this situation, you may want to create a customized trust and define the precise circumstances in which the beneficiary will have access to the trust income and capital. If your beneficiary is mentally competent and does not have reduced earning capacity, for example, they may benefit from receiving an outright inheritance to use as they wish to enhance their lifestyle, contribute to a Tax-Free Savings Account or invest for their future needs. There may be no need to place parameters around the use of the funds and your planning can be tailored to your beneficiary's needs.

Evaluating Your Options

There are a number of ways you can structure your beneficiary's inheritance and you are not limited to using just one. Your estate plan could incorporate multiple strategies, depending on your beneficiary's circumstances.

Each strategy has its advantages and disadvantages, as well as special considerations that you need to keep in mind. For example, if you decide that a Henson trust is an appropriate solution, you will need to find a suitable trustee. The individual or organization you appoint will hold legal title to the trust assets and must act in the best interests of the beneficiary, within the terms of the trust. They will be required to perform a

range of responsibilities and it may be a long-term appointment. Take into account your trustee's experience and aptitude for the task, their location, their age in the case of an individual, and their willingness to act in this capacity.

Think about the eventual destination of the funds on your beneficiary's death. Do you have other beneficiaries in mind? For example, assets in an RDSP legally belong to the beneficiary and on that person's death, the funds remaining in the plan will pass under the terms of their Will. If the beneficiary is a minor, or not mentally competent to make a Will, the funds in the RDSP could pass according to the intestacy laws of the province where the beneficiary resides. This could mean that the funds may end up in the hands of individuals who you didn't intend to benefit. In this case, you may want to look at other strategies that allow you to redirect the funds to other beneficiaries such as using a trust.

Your tax and legal counsel can advise you about the potential consequences of the various options and help you through the decision-making process.

Special Considerations When Planning for a Person with a Disability

There are a number of things that will affect your decision on how to structure your estate plan if you are planning for the benefit of a person with a disability. You may need to consider:

- Is the person I am planning for a minor or an adult?
- Is my adult beneficiary mentally competent? If not, do they have a court-appointed guardian to take care of their personal care and/or their property and financial decisions?
- Does my beneficiary have a source of income? Does he or she have reduced or no earning capacity because of his or her disability?
- What are my beneficiary's income needs now and in future? Will these needs change later on in life?
- Does my beneficiary receive provincial government disability benefits because of his or her disability?

Give each of the above questions some thought and discuss the answers with your legal counsel to ensure your estate plan will help you provide for your beneficiaries in the manner you intend.

An RDSP Primer

The Canadian government created the Registered Disability Savings Plan (RDSP) to help families save money for the future needs of loved ones with disabilities.

A person with a disability or the parent or guardian of a person with a disability may be able to open an RDSP for the person with a disability. Contributions are not tax deductible, but the investment income grows on a tax-deferred basis. Withdrawals are taxable in the hands of the beneficiary.

To qualify as an RDSP beneficiary, the person must:

- Be eligible for the federal disability tax credit.
- Be a resident of Canada.
- Have a valid social insurance number.
- Be under 60 years of age.

Anyone can make contributions to an RDSP as long as the total lifetime contributions do not exceed $200,000 per RDSP beneficiary. To help accelerate the growth of an RDSP, the government provides grant and bond monies, up to certain annual limits. The amount of grant and bond available will depend on these limits as well as the beneficiary's age and net family income.

There are no annual contribution limits, so a parent or spouse could theoretically contribute $200,000 in one lump sum to take advantage of tax-deferred investment growth. However, it may make sense to spread out some contributions in order to benefit from government grants since grants are not paid to the plan in future years for past years' contributions.

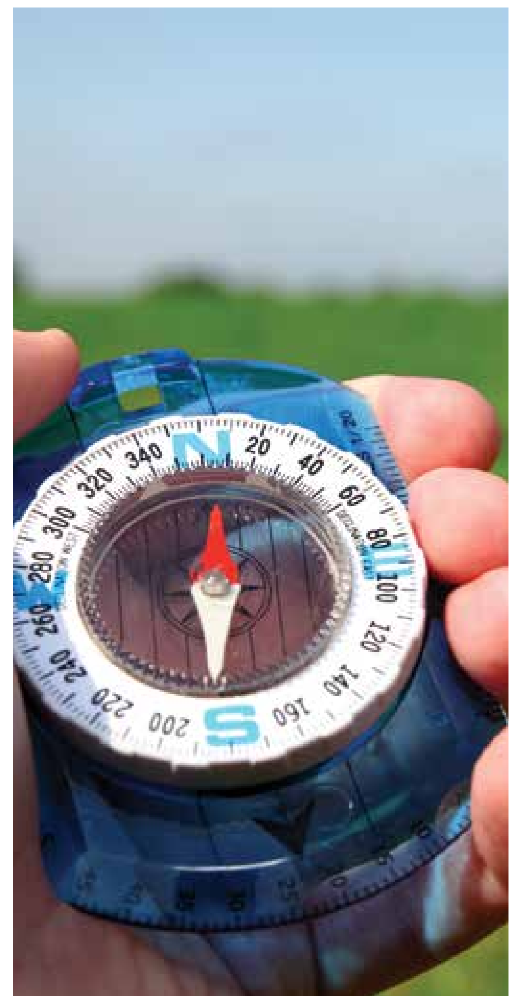
Does Socially Responsible Investing Hurt Investment Returns?

A common concern about socially responsible investing (SRI) is that there is a premium to be paid for being socially responsible that necessarily diminishes investment returns. A comprehensive review of the empirical literature questions this premise. This article challenges the myth of lower long-term returns for SRI investors and provides an overview of the current research on the subject.

Introduction

Socially responsible investing (SRI) has been practised for more than a century. Almost from the beginning, practitioners, academics and the investing public have asked if the inclusion of social and environmental considerations in the investment decision-making process hurts investment returns.

The answer to this question is central to the future growth of SRI. If it is the case that SRI produces lower investment returns, then SRI will never be more than a niche market, appealing solely to those individuals with strong convictions about the types of companies they want to hold and who are prepared to accept less material wealth in order to satisfy these concerns. If, however, it can be shown that SRI produces superior investment returns, then SRI will move further into the mainstream and traditional investment managers increasingly will integrate SRI principles into their investment processes in order to boost returns. Finally, if research shows that there is no material difference between the investment performance of SRI funds and traditional investment funds, then SRI will establish itself as a legitimate investment alternative for those investors who believe companies should be held accountable for their social and environmental practices.



Opponents of SRI argue that the application of non-financial considerations, such as environmental, social and governance (ESG) factors, to the investment process must result in lower investment returns because the number of investment opportunities is reduced. Relying on modern portfolio theory, this position, stated crudely, says that investment portfolios constructed from an investment universe of, say, 2,000 companies will be more efficient (i.e., they will have higher expected returns and/or lower expected volatility) than portfolios constructed from an investment universe of, say, 1,500 companies. In other words, SRI works with a smaller investment universe and therefore will generate lower expected risk-adjusted returns.

Supporters of SRI readily admit that the application of ESG considerations will reduce investment opportunities – after all, the raison d'être of SRI is to exclude "irresponsible" companies from consideration – but argue that their integration into the investment process delivers benefits that more than offset the loss of portfolio efficiency caused by the more limited investment set. Socially responsible investors believe that integrating ESG factors into the investment process will eliminate companies that are expected to perform more poorly than their competitors. Excluded companies are engaged in unsustainable activities or practices that will make them less profitable over time.[1] In other words, companies that embrace corporate social responsibility (CSR) will deliver better financial performance than competitors that do not, and market participants systematically overlook these positive factors. Therefore, SRI proponents argue that any loss of portfolio efficiency due to a smaller investment universe is more than offset by the more attractive investment characteristics of the remaining companies.

There is a third view, which to date has not received as much attention. This view holds that, under normal conditions, there should be no meaningful difference between the long-term performance of a broad universe of SRI funds and a broad universe of traditional investment funds that are managed with comparable mandates. This view is based on three premises:

- The integration of ESG factors into the investment process, providing it employs a best-of-sector approach,[2] reduces the investment universe on a random basis;
- The number of securities eliminated through the integration of ESG considerations is not large; and
- The smaller investment universe does not produce a material loss of efficiency in portfolios constructed from that universe.

Proponents of this view have divorced themselves from the ideologically-laden debates about whether SRI funds should perform better or worse than traditional investment funds. Instead, they believe that there should be no expected difference in performance and that the merits of SRI rest entirely with the wishes of individual investors. According to this view, SRI does not involve a Faustian choice between following one's conscience and following one's pocketbook; instead, it is a legitimate investment approach that can be expected to provide investment performance on par with investment funds that do not formally apply socially responsible investment principles.

Given these competing theoretical views, the question of how SRI portfolios perform relative to traditional investment portfolios is, at the end of the day, an empirical one. Research into this question has been approached in four ways:

- Comparing the performance of SRI indices with traditional indices;
- Comparing the performance of SRI funds with traditional investment funds/indices;
- Creating hypothetical portfolios of companies ranked highly against ESG factors and comparing their performance with lower-ranked companies; and
- Comparing the financial performance of companies that score highly on measures of corporate social performance with those that do not.

[1] For example, companies, which are heavy polluters, have a greater chance of facing litigation over their emissions and will use more inputs in production.

[2] Rather than exclude all companies in a sector that is considered "bad," such as mining, the "best-of-sector" approach seeks to identify those companies with the best relative ESG performance within the sector peer group.

The remainder of this article provides an overview of the key findings of the empirical research conducted in each of these areas. The main finding from this body of work is that socially responsible investing does not result in lower investment returns.

Index Comparisons

An index is a universe of securities constructed to represent a particular market or asset class. Examples include the S&P/TSX Composite Index, a grouping of about 250 companies representing the Canadian stock market, and the S&P 500 Index, a grouping of 500 companies representing the U.S. stock market. While construction rules differ among indices, two important features of most are that: (i) larger capitalization securities have a higher weight in the index than smaller capitalization securities and (ii) the composition of the index is adjusted regularly, either based on thedecisions of an oversight committee and/or through a rules-based formulation.

Stock market indices have been around for more than a century. While they serve many purposes, one of the most important is to permit investment managers to compare their performance with that of the overall market. In the past 30 years, there has been a significant increase in the number of indices available to investors.[3]

In May 1990, the Domini 400 Social Index (now the FTSE KLD 400 Index) was created, the first index to measure the performance of a broad universe of socially responsible stocks in the United States. Since then, a number of other SRI indices have been created,[4] including the:

- KLD Global Sustainability Index (GSI) (2007);
- MCSI North American ESG Total Return (NNASIU) Index (2010);
- Dow Jones Sustainability North American Index (2001);
- Dow Jones Sustainability Group Index for global portfolios (1999);
- Jantzi Social Index (JSI) in Canada (2000);
- Calvert Social Index in the United States (2000);
- ECPI Index Family for European and global portfolios (2000);
- FTSE4Good Index for global portfolios (2001);
- ASPI Eurozone Index for European markets (2001);
- Johannesburg Stock Exchange SRI Index (2004);
- Ethibel Sustainability Index Global (2002).

One method to determine if SRI results in lower investment returns is to compare the performance of an SRI index with a comparable traditional index.

This is shown in the charts on the following page for the United States and Canada. In both cases the SRI index has slightly outperformed the traditional index, although the differences are small. However, there can be meaningful differences, both positive and negative, over shorter periods (e.g., differences of +/- 2% over a one year period are not uncommon, and they have been as large as 5%).

Looking at SRI indices has the advantage that it eliminates the effects of such factors as transaction costs, timing, and management skills; that a similar study of SRI mutual funds would need to address. However, a simple comparison of the performance of an SRI index with a comparable traditional investment index, while intuitively appealing, is not sufficient to determine if SRI performs better, the same, or worse than traditional investing. Differences in performance could, for instance, be due to style, industry, or size biases that have material impacts on performance during the comparison period. For instance, SRI indices are widely acknowledged to have a growth bias relative to traditional indices and performance differences between these two indices over any given period could be caused by this factor. This has been illustrated in a study by Statman and Klimek (2005), who found that SRI indexes outperformed the S&P 500 Index in the late 1990s during the tech bubble, and subsequently lagged the S&P 500 Index in the early 2000s.

[3] The five main global providers of stock market indices are: Standard & Poor's (S&P), Russell; FTSE, Morgan Stanley Capital International (MSCI) and Dow Jones.
[4] For a more comprehensive list, including definitions of indices, please refer to "Vice vs. Virtue Investing Around the World," Sebastian Lobe and Christian Walkshäusl, University of Regensburg (May 9, 2011).

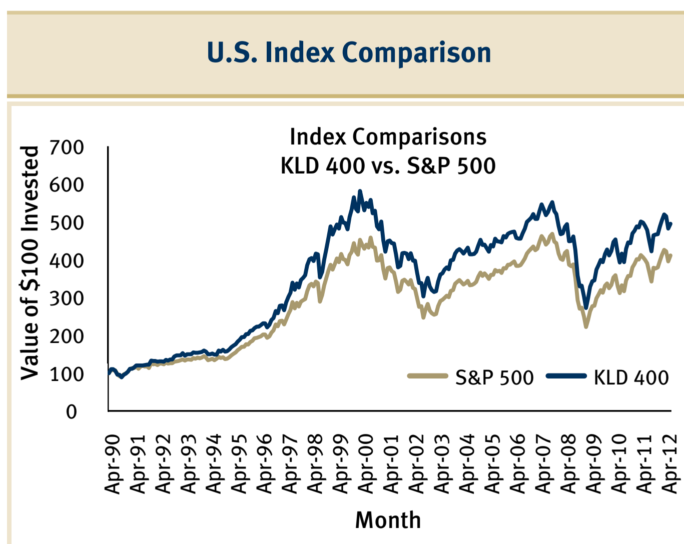
This has also been illustrated in an updated study by di Bartolomeo and Kurtz (2011). Performing a holdings-based attribution analysis using the Northfield U.S. Fundamental Equity Risk Model, they examined the risk and return characteristics of the S&P 500 Index and the KLD 400 Index for an 18-year period between January 1992 and June 2010. Within the total 18-year period, two sub-periods were also analyzed: January 1992-November 1999, and December 1999-June 2010. The KLD 400 outperformed the S&P 500 during January 1992-November 1999, but underperformed during the latter period. Di Bartolomeo and Kurtz concluded that the strong performance in the 1990s was entirely factor driven, during which time the KLD 400 Index had a higher market beta, bets on higher valuation, and an overweight position in the Information Technology sector (i.e., growth stocks). The underperformance following the 1999 peak was said to be due to an over reliance on the same factors. According to a CFA Digest summary of the study, conclusions were that "investors seeking superior investment performance have incurred no material benefit or cost from using (the KLD 400 Index) universe," and that "predictions of negative alpha (for socially responsible stocks) are wrong."

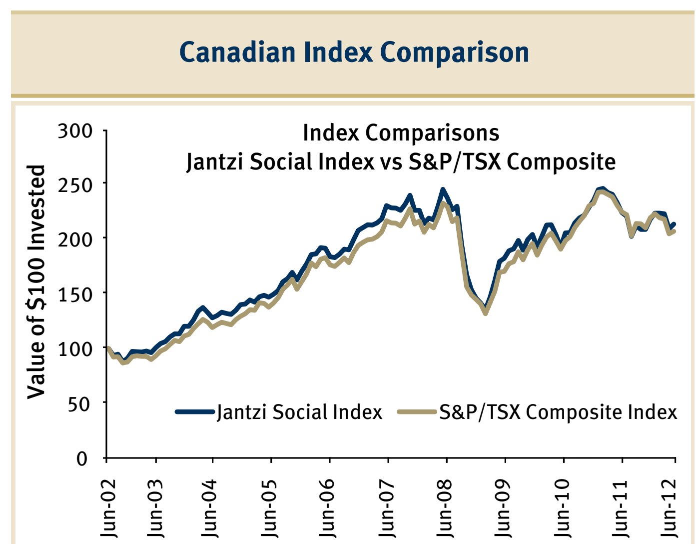
Other studies examining the relative performance of socially responsible indices have been conducted.[5] In their extensive review of relative performance in the U.S., UK, and Japan during the 2000s, Managi, Okimoto, and Matsuda (2012) concluded that conventional indices do not outperform SRI indexes, and that "investors can take ESG criteria into consideration without sacrificing risk or return."[6] However, while Schroder (2005) also confirmed this, he found that 20 of the 29 international SRI indices he looked at had higher risk (volatility) than their benchmarks. This suggests that on a risk-adjusted basis, SRI indices may underperform conventional indices.

As the number of SRI indices grows, and the length of their performance history increases, we expect to see more empirical research in this area. For the moment the evidence is mixed, but generally indicates that there is little or no difference in long-term performance.

Mutual Fund Comparisons

A second body of work has attempted to determine if SRI results in lower investment returns by comparing the performance of SRI mutual funds with traditional mutual funds and/or traditional market indices. This research is difficult because the sample size of SRI mutual funds is small and few have performance histories exceeding 10 years. A third challenge is constructing an appropriate control group of traditional mutual funds. Notwithstanding these methodological issues, several studies have been conducted. The key findings of a selection of these studies are reported in Table 1.





[5] See Luck, Christopher J., "Domini Social Index Performance" and Dhrymes, Phoebus J., "Socially Responsible Investing: Is it Profitable?", The Investment Research Guide to Socially Responsible Investing (Plano, Texas: The Colloquium on Socially Responsible Investing, 1998).
[6] See Managi, Shunsuke, Tatsuyoshi Okimoto, and Akimi Matsuda, "Do Socially Responsible Investment Indexes Outperform Conventional Indexes?" Munich Personal RePEc Archive, Unpublished, (2012).

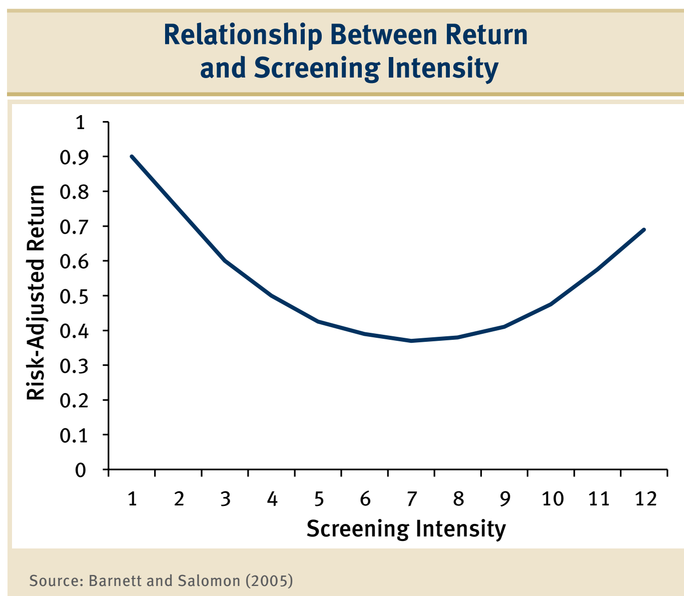
The findings to date from these (and other) empirical studies are contradictory, although, with a small number of exceptions, in all cases where differences were found (higher or lower), the authors concluded that the differences were small and/or statistically insignificant.

Three interesting pieces of research have given some insights as to why the empirical evidence thus far has been contradictory. One study found that while SRI funds perform similar to conventional funds, conventional funds with a slightly higher SRI tilt tend to perform better than funds with fewer socially responsible companies.[7]

The second study[8] found that there was a curvilinear relationship between the number of screens used by a fund and the financial performance of the fund. In plain English, this means that as the number of screens increases the returns of the funds at first decline and then begins to increase again. See the following graph as an illustration of this effect.

The explanation put forward by the researchers is that when you use only a small number of screens you eliminate fewer companies from your portfolio and consequently performance will not be greatly impacted. As the number of screens increases, more companies are eliminated from the portfolio, the portfolio is therefore less diversified and performance suffers. However, once a certain number of screens are reached the companies that remain in the portfolio are of a higher quality and lower inherent risk, and as such the performance then begins to improve. Blancard and Monjon (2010) further tested this relationship, and produced similar results.

Relationship Between Return and Screening Intensity



Source: Barnett and Salomon (2005)

Moreover, Cortez, Silva, and Areal (2009) found that SRI mutual funds have shown superior performance in Europe as opposed to the United States. This may be attributed, according to the authors, to differences in SRI investment style. The European SRI approach generally used positive criteria (security selections based on the most socially responsible companies), whereas the American approach was more oriented towards negative screening (security selection based on excluding the least socially responsible companies). These results imply further support for the curvilinear relationship.

This research seems to reconcile the current conflicting evidence, and is intuitively appealing. However, more corroborating research would need to be performed before we can reach any conclusions. Therefore, the evidence to suggest that SRI funds systematically underperform traditional mutual funds is limited, as is the evidence to suggest that SRI funds outperform traditional funds.

In separate reviews of this literature, two investment banks reached strikingly similar conclusions:

"Contrary to theory, most academic studies show that incorporating social screening into a portfolio does not necessarily have detrimental effects on performance. Studies suggested that SRI portfolios have about the same risk-adjusted returns as their normal counterparts." (UBS Warburg, Sustainability Investment: The Merits of Socially Responsible Investing, p. 14, August 2001.)

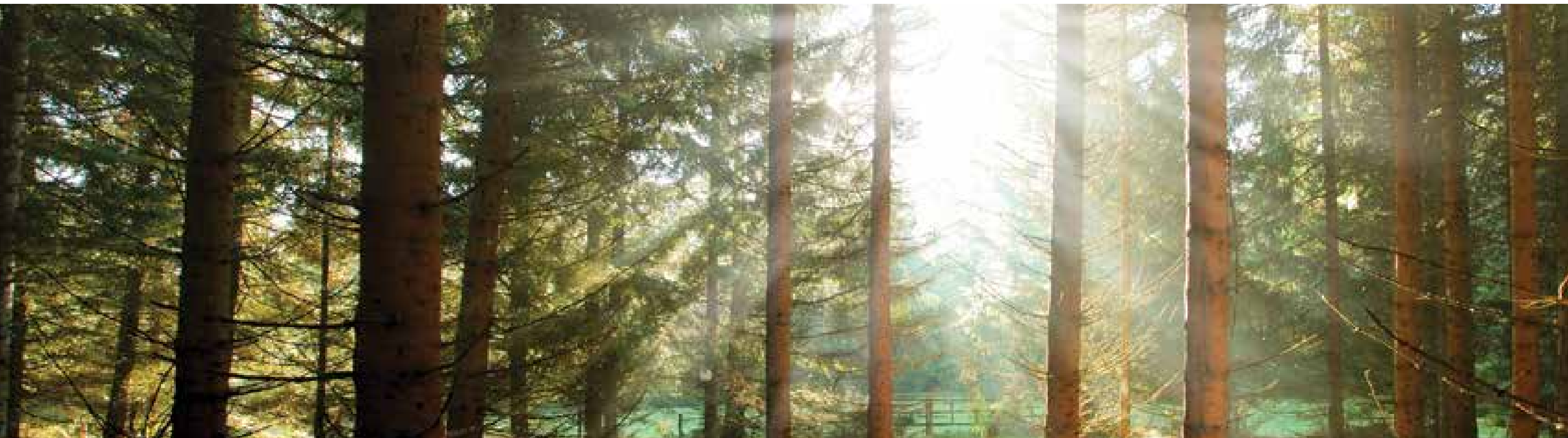
"...the balance of the empirical evidence supports the view that an SRI approach will in general not lead to long run risk-adjusted under-performance compared with a conventional approach." ABM-AMRO Asset Management, Does Socially Responsible Equity Portfolios Perform Differently from Conventional Portfolios? If So: How and Why? (p. 93, September 2001).

[7] Voir Plantinga, Auke et Scholtens, Bert, "Socially responsible investing and management style of mutual funds in the Euronext stock markets", document de travail, Université de Groningue, 2001.
[8] Barnett, Michael L. et Robert M. Salomon, « Beyond Dichotomy: The Curvilinear Relationship Between Social Responsibility and Financial Performance », Strategic Management Journal, vol. 27, n°11, novembre 2006, p. 1101-1122.

Table 1: Summary of SRI Fund Studies

Study	Country	Data	Time Period	Findings for SRI Funds
Amene, Sourd (2008)	France	62 mutual funds compared to conventional indices	January 2002 to December 2007	■ No significant performance differences
Areal, Cortez, Silva (2010)	United States	38 SRI funds compared to the Vice fund and S&P 500 benchmark	October 1993 to September 2009	■ SRI funds performed better during a crisis ■ Evidence of both higher and lower returns
Asmundson & Foerster (2001)	Canada	2 SRI Funds (over 10 year period) vs. TSE 300 Index	January 1990 to December 1999	■ Evidence of both higher and lower returns ■ Lower risk
Bauer et al. (2002)	Germany, UK, & U.S.	103 SRI Funds and 4,384 traditional mutual funds	January 1990 to March 2001	■ Evidence of both higher and lower returns ■ Differences are not statistically different
Bauer et al. (2006)	Canada	8 ethical, 267 conventional mutual funds	January 1994 to January 2003	■ No significant performance differences between funds
Bello (2005)	United States	42 SRI funds, 84 conventional funds	January 1994 to March 2001	■ Risk adjusted returns of SRI funds indistinguishable from returns of conventional funds ■ Fund characteristics did not differ between the two groups
Cortez, Silva, Areal (2009)	United States, Austria, Belgium, France, Germany, Italy, Netherlands, UK	39 European market mutual funds and 7 U.S. mutual funds compared to conventional and socially responsible indices	August 1996 to August 2008	■ No significant performance differences for European funds ■ Significant underperformance for U.S. and Austrian funds
Derwell & Koedijk (2005)	United States	8 SRI bond funds	1987 - 2003	■ SRI bond funds provided returns similar to or superior to conventional bond funds ■ Found to perform in-line during an economic expansion, and significantly outperform during an economic contraction
Derwall and Koedijk (2008)	United States	15 SRI mutual bond funds and 9 balanced mutual funds vs. their conventional counterparts	1987 to 2003 (months not specified)	■ Higher returns ■ No results statistically significant ■ Expenses for SRI funds did not cause underperformance
Geczy et al. (2003)	United States	35 no-load SRI funds and 859 no-load traditional mutual funds	July 1963 to December 2001	■ Lower returns ■ Difference is significant under certain conditions
Gil-Bazo, Ruiz-Verdu, Santos (2008)	United States	86 SRI mutual funds compared to 1,761 conventional funds	1997-2005 (months not specified)	■ Higher risk adjusted performance before and after fees
Kreander et al. (2005)	Europe	30 SRI funds matched with 30 similar non-SRI funds	January 1995 to December 2001	■ No difference in performance on a risk adjusted basis
Magnier, Luchet, Schaff (2008)	Europe, North America, Australia, Asia	171 SRI mutual funds compared to non-SRI indices and non-SRI funds	October 2006 to October 2008	■ No significant performance differences ■ Best-in-class funds that did not use exclusion criteria performed better than those that did
Scholtens (2005)	Netherlands	12 SRI funds compared to SRI and non-SRI indicies	November 2001 to April 2003	■ Slight outperformance of SRI funds vs. the index ■ Slight underperformance of SRI funds vs. non-SRI funds ■ Neither result was statistically significant
Schroeder (2003)	Germany, U.S.A., UK	30 U.S. funds, 16 German and Swiss funds, and 10 SRI indices	Minimum of 30 months of data before 2002	■ No significant performance differences ■ Some SRI funds exhibited insignificantly higher returns
Sourd (2012)	France	87 SRI funds compared to both cap-weighted and efficient benchmarks	January 2008 to December 2011	■ Most results insignificant ■ Significant values were negative ■ Efficient benchmarks were beat less often

* As reported in ABN-AMRO (2001).



Comparing Performance of High-Ranked Socially Responsible Companies vs. Low-Ranked Socially Responsible Companies

A third area of SRI research has been focused on creating hypothetical portfolios of socially responsible companies, using data primarily provided by Innovest Strategic Value Advisors.[9] For the most part, these studies have used a company's environmental rating as the key independent variable.

This area of research has evolved over the last ten years, and can be illustrated by looking at two studies. The first of these studies by Blank & Daniel (2002) took a portfolio made up of equally weighted positions of top-rated eco-efficient companies, and made three distinct performance comparisons:

1. to an equally weighted universe of all Innovest rated companies;
2. to an equally weighted portfolio of low-rated eco-efficient companies; and
3. to the S&P 500 (a comparison of risk adjusted returns using the Sharpe Ratio was used).

What the researchers observed is that, for all three comparisons, there was clear and significant outperformance by the portfolio made up of top-rated eco-efficient companies for the observed period (1997 – 2001). The authors then went on to adjust these raw results for any kind of style bias, and found that there was still significant outperformance for the "eco-efficient" portfolio. This observation was significant; as such a strong link between an SRI approach and excess returns had rarely been so clearly demonstrated in the past.

The second study in this area took the Blank & Daniel research a step further by taking a closer look at this "eco-efficiency premium puzzle."[10] This study took a more in-depth look at the outperformance of the eco-efficient portfolio, and in particular at how this anomaly could be explained. The authors found that a portfolio made up of high-ranked eco-efficient companies outperformed a portfolio made up of low-ranked companies, and that it could not be explained by adjusting for market risk, investment style, and industry effects. The authors then went on to demonstrate how to build an eco-efficient portfolio that would outperform, even when transaction costs were considered. The authors conclude by observing that the superior performance of a portfolio constructed using environmental considerations as a key factor could be an example of the market mispricing information on the ecological performance of companies.

More recent research has also provided some additional general insight.[11] It has been observed that the eco-efficiency premium initially did not exist, but has developed and increased strongly over time. This indicates that environmental factors are having an increasingly significant effect on firm performance, and that the proportion of total risk that environmental risk represents is increasing.

In addition there is research that extends this effect to other socially responsible criteria. A study by Statman and Glushkov (2008) found that a portfolio of stocks with high ratings of a broad range of social responsibility characteristics outperformed those with low ratings. The factors that had the strongest correlation with performance were community, employee relations, and environment. Another study by

[9] Innovest is an investment research and advisory firm that specializes in analyzing companies' performance on environmental issues, on a best-in-class approach, termed "Eco-Efficiency".
[10] Bauer, Rob, Jeroen Derwall Nadja Guenster and Kees Koedijk, "The Eco-Efficiency Premium Puzzle," Financial Analyst Journal Volume 61, Number 2 (March/April, 2005).
[11] Bauer, Rob, Jeroen Derwall, Nadja Guenster and Kees Koedijk, "The Economic Value of Corporate Eco-Efficiency." Limburg Institute of Financial Economics (LIFE) Working Paper 05-09, (June 9, 2005).

Edmans (2007) found that there may also be an employee satisfaction premium. The researcher's findings imply that "the stock market does not fully value intangibles, even when independently verified by a highly public survey," (e.g., "100 best companies to work for in America" by *Fortune* magazine), and "SRI screens based on employee welfare may improve investment performance."

While this area of research has provided some interesting results, more empirical testing would add to our understanding of the factors that drive the eco-efficiency premium and how it has changed through time. In particular, results based on additional data sets and the performance of actual portfolios would be useful extensions to this line of research. Regardless, this will continue to be a fertile and interesting area of SRI research in the coming years.

Corporate Social Performance

The fourth approach to determine if SRI impacts investment returns has been to examine the financial performance of companies that score highly on one or more measures of good corporate social responsibility (CSR) versus those that do not. Proponents of SRI argue that companies embracing corporate social responsibility should deliver superior financial performance. Some of the benefits CSR is purported to deliver include:[12]

- An improved ability to attract and retain better employees;
- Competitive advantages in production technology designed to eliminate waste;
- More productive workforces;
- Higher sales and more loyal customers;
- Lower litigation costs;
- Lower environmental costs;
- Enhanced brand value and reputation;
- Better risk and crisis management; and
- Good relations with government and communities.

Supporters of SRI argue that these benefits will translate into improved financial performance.

Opponents of SRI are skeptical that CSR confers meaningful benefits on companies and, even if such benefits can be shown to be present, they do not translate into better financial performance. At best, according to opponents, there are no financial advantages to corporate social responsibility. Some opponents of SRI would go one step further: companies pursuing CSR will actually perform worse because such efforts will distract management from their key focus – to maximize profits.[13]

Needless to say, this question has been fertile ground for academic research and more than 100 empirical studies can be identified that have attempted to determine if a relationship between corporate social performance and financial performance exists. This research can be divided into two main segments:[14]

- Event studies – measuring the impact of a major CSR event on the subsequent financial performance of a company. A "CSR event" can be positive (e.g., receiving an award for good environmental management) or negative (e.g., a pollution spill or product recall).

[12] These and other benefits of CSR are put forward by various non-governmental organizations promoting corporate social responsibility.

[13] For one expression of this view, see Friedman, Milton, "The Social Responsibility of Business is to Increase its Profits," New York Times Magazine (September 13, 1970).

[14] ABM-AMRO Asset Management, Does Socially Responsible Equity Portfolios Perform Differently from Conventional Portfolios? If So: How and Why? (September 2001), pp. 27-28.

- Cross-sectional regression analysis – examining the relationship between one or more CSR indicators and one or more measures of financial performance.

There has also been a number of what can best be described as "anecdotal" studies, which have used selective case studies to illustrate the benefits to companies of corporate social responsibility. For the most part, this "research" has been sponsored or prepared by non-governmental organizations dedicated to promoting the wide-spread adoption of CSR and, consequently, is of limited empirical value.

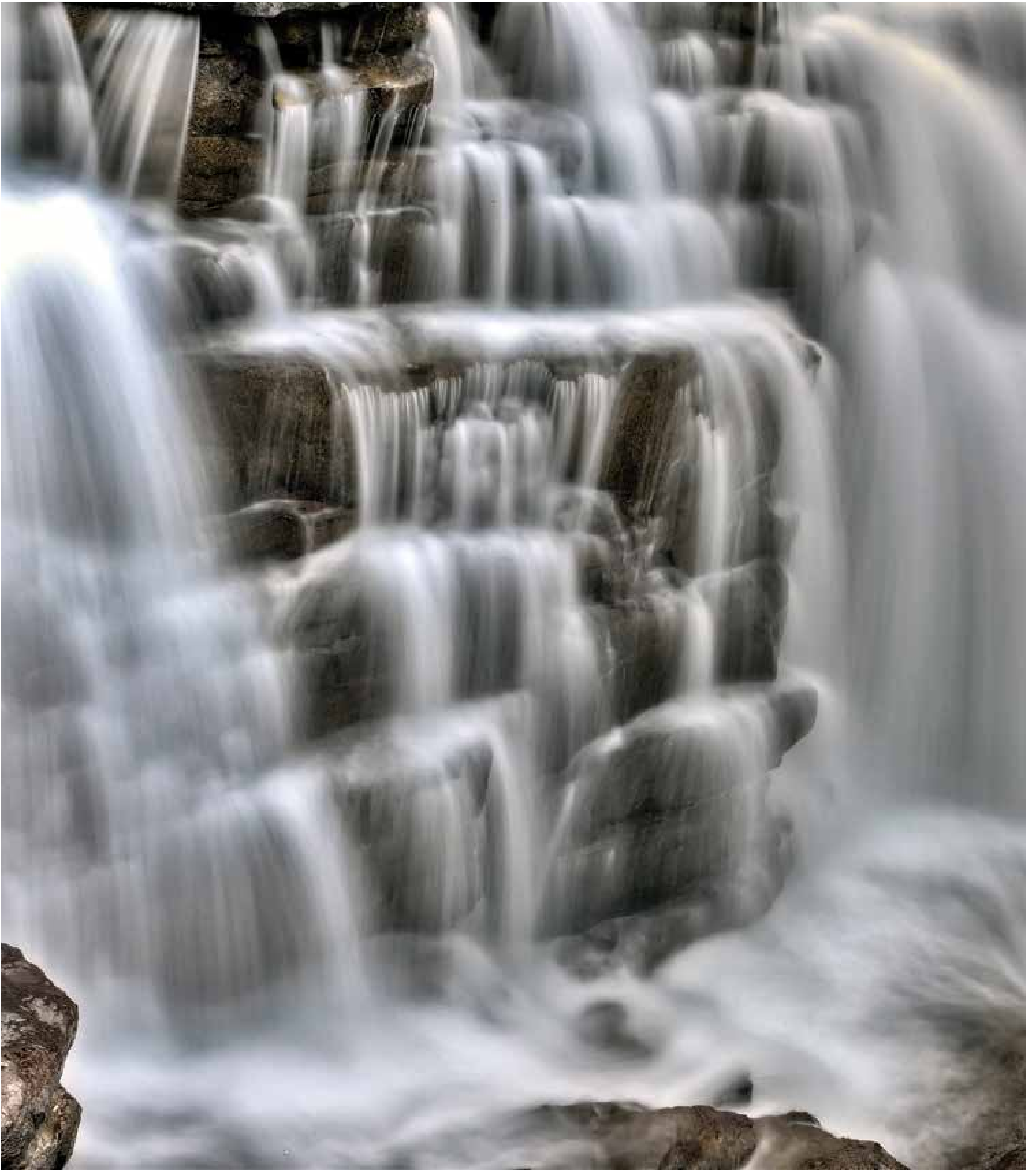
While the majority of these studies have found some evidence of a positive linkage between corporate social performance and financial performance,[15] these studies suffer many methodological failings that make it difficult to draw any strong conclusions. Three of the more serious methodological problems are:

- **Definition of the independent variable(s):** Researchers are attempting to determine if CSR produces better financial performance. Three approaches have been used to specify the independent variable: (i) using one CSR attribute – such as good environmental stewardship or good corporate governance – as a proxy for CSR; (ii) using multiple CSR attributes as separate independent variables; and (iii) converting multiple CSR variables into a single CSR "index," which is then used as the independent variable. Further, many CSR variables have a strong qualitative element and this makes it difficult to convert them into numerical values, which is necessary to perform statistical analysis. These definitional issues mean that CSR studies are often not directly comparable and this undermines the ability to reach strong general conclusions from this body of research.
- **Improper model specification/omitted variables:** Most often these studies have used relatively simple linear regression models to determine if a statistical relationship exists between CSR and financial performance. Until recently, these studies have often omitted other variables that could affect financial performance. Some of the better work more recently has integrated CSR variables into a more general asset-pricing model.
- **Correlation does not mean causation:** Establishing a positive linkage between CSR and financial performance does not mean that CSR caused this to happen. In fact, the opposite could be true. Perhaps CSR is a "luxury good" that is pursued by companies that are already highly profitable? According to this view, companies with weak financial performance cannot afford to be "socially responsible" but are instead focused on core production activities designed to improve short-term financial performance.

While it is hard to draw conclusions from the research thus far, one group[16] has attempted to overcome these and other methodological issues by conducting a "meta-analysis" comprised of large amounts of data from many independent studies. This technique has allowed them to perform a holistic analysis of the CSR and corporate financial performance (CFP) relationship rather than looking at each facet of CSR independently and has also helped to eliminate inherent biases found in previous studies. The meta-analysis study was able to make the following conclusions:

- There is generally a positive, bidirectional causal association between good CSR and CFP across all industries;

[15] See Griffin, Jennifer J., and John F. Mahon, "The Corporate Social Performance and Corporate Financial Debate: Twenty-Five Years of Incomparable Research," Business & Society (March 1997) and ABM-AMRO (2001) for reviews of these studies.
[16] Orlitzky, Marc, Frank L. Schmidt and Sara L. Rynes, "Corporate Social and Financial Performance: A Meta-Analysis," Organisational Studies 24(3) pp.403-441, 2003 Markowitz Prize Winner (2002).



- Counter-intuitively, corporate environmental performance has a smaller effect on CFP than other CSR measures (i.e., managerial principles, corporate reputations for minority hiring, etc.); and
- Good CSR is more highly reflected in accounting-based financial performance than market-based financial performance, possibly because the market views over-emphasis of CSR as a deliberate attempt of the company to manage external impressions.

Baron, Harjoto, and Jo (Baron, David P., Maretno A. Harjoto, and Hoje Jo, "The Economics and Politics of Corporate Social Performance," Stanford University Graduate School of Business Research Paper No. 1993; Rock Center for Corporate Governance at Stanford University, April 21, 2009) further analyzed the relationship between CSR and CSP on a holistic scale by determining relationships between company Corporate Social Performance (CSP) and social pressure, Corporate Financial Performance (CFP) and social pressure, and CSP and CFP. There was a significant positive relationship between CSP and social pressure, a significant negative relationship between CFP and social pressure, but no significant relationship between CFP and CSP. However, it was found that CSP was greater and social pressure less in more competitive industries, suggesting that CSP may be strategic rather than mandated.

Three recent studies have also given some interesting insight into CSR by looking at slightly different aspects of the topic. The first study,[17] from Harvard Business School, looked at the impact of a "sustainability corporate culture" on financial performance. High Sustainability companies (that long ago adopted policies guiding their impact on society and the environment) outperformed Low Sustainability companies (those that had not adopted those policies) in both stock market and accounting measures over an 18-year period, despite the market not expecting that performance. Another noteworthy finding of the study was that firms with a focus on sustainability have benefitted most in advertising intensive (consumer oriented) industries, and industries where firms' products depend on the extracting of natural resources. The second study[18] provides further support for this conclusion, showing that bondholders should expect a higher default risk for borrowers with poor environmental practices.

The third study[19] looked at CSR as it relates to the cost of equity capital. The researchers found that companies with a significant focus on ESG practices typically enjoy cheaper equity financing than companies with less focus on ESG practices. A possible explanation is that companies with low ESG scores experience a reduced investor base and are perceived as riskier investments.

There seems to be an interesting body of research emerging that indicates that CSR factors are beginning to be incorporated into the markets overall perception of risk. What is relevant to potential investors in SRI funds is that this literature does not provide any compelling evidence that companies pursuing CSR worsen their financial performance. This finding is consistent with research from the other three areas of inquiry that found SRI does not hurt investment returns.

Summary and Conclusion

This article has provided a review of empirical literature related to the question: Does socially responsible investing produce lower investment returns? Four distinct bodies of research have addressed this question. The first looked at the performance of SRI indices relative to traditional market indices. The second examined the performance of SRI mutual funds relative to traditional mutual funds and/or market indices. The third compared the relative financial performance of hypothetical SRI stock portfolios against conventional portfolios and indices, and the fourth has tried to determine if there is a linkage between corporate social responsibility and improved financial performance. The chief finding of this research is that socially responsible investing does not result in lower investment returns. This is an important finding because it provides support to individual investors and trustees of institutional funds that they can pursue a program of socially responsible investing with the expectation that investment returns will be similar to traditional investment options.

Finally, it is important to note that the question of whether or not SRI reduces investment returns will never be laid completely to rest. One reason is that this is a difficult empirical question and there will always be legitimate disputes over the quality of the data and the most appropriate methodology to use. Perhaps more importantly, this question will never be answered to everyone's satisfaction because many of the people engaged in this debate carry with them strong ideological baggage. Opponents of SRI are opposed to the notion of anything other than financial factors affecting the value of a security that, in their view, "hell will freeze over" before they accept that this is not the case. Likewise, some proponents of SRI are so steeped in their own moral superiority that they cannot fathom the possibility that the integration of ESG factors does not have a beneficial effect on investment returns. The challenge for the rest of us is to ignore the rhetorical noise emanating from these extreme views and focus on the facts.

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[17] Eccles, Robert G., Ioannis Ioannou and George Serateim, "The Impact of a Corporate Culture of Sustainability on Corporate Behaviour and Performance," Harvard Business School, (2012).
[18] Bauer, Rob and Daniel Hann, "Corporate Environmental Management and Credit Risk," Maastricht University, (December 23, 2010).
[19] El Ghoul, Sadok, Omrane Guedhami, Chuck C.Y. Kwok, and Dev R.Mishra, "Does Corporate Social Responsibility Affect the Cost of Capital?" Journal of Banking & Finance, Vol. 35, Issue 9, pp. 2388-2406, (2010).

By taking a disciplined approach, you can build a wealth management plan to help you grow your assets, protect your wealth, and pass assets on to your heirs during your lifetime and on your death.

Ten Tips for Building a Wealth Management Plan

A well-constructed wealth plan can be critical to your family's financial future. The list below, although not exhaustive, highlights 10 key elements of an effective wealth management plan. Depending on your family's circumstances, some or all of these elements will apply to you. Start by identifying those issues that you have already addressed, eliminate those that do not apply to your situation, and prioritize those that remain. Then, with guidance from your wealth advisor, start to put together an action plan that's relevant for you and your family.

Tips for Accumulating Wealth

1. Income Split Using a Spousal Loan or Family Trust

If you pay taxes at the highest marginal tax rate, you know just how punishing Canada's marginal tax system can be. For many Canadians, taxes are their largest annual expense. But if you have family members that earn little or no taxable income, you may be able to reduce the overall amount of income tax paid by your household by using a prescribed rate loan to split income with a family member in a lower tax bracket. Using a formal loan at the Canada Revenue Agency's prescribed rate of interest is an excellent way to legally split income with your adult children, your spouse or through a trust with your minor children.

2. Use Credit Effectively

In addition to focusing on your assets, a well-designed wealth management strategy should also give due consideration to your borrowing and credit needs. The right combination of lending products, tailored to meet your family's circumstances, can enhance your lifestyle whether you borrow to renovate your home, to buy real estate, to pay education expenses, to expand your business, or to fund other investment opportunities. Assessing your credit and lending needs may reduce or eliminate unnecessary debt. Restructure your existing debt so that the interest is tax-deductible wherever possible and consider the use of "good debt," such as a spousal loan to potentially reduce taxation.

You've worked hard, saved, and invested wisely to get where you are. A comprehensive insurance plan can help you protect your current assets and your future holdings.

Tips for Protecting Your Assets

3. Secure Your Retirement

Have you considered your sources of retirement income and asked yourself whether you will have sufficient income in retirement to sustain the lifestyle you desire? You may have savings through an RRSP and/or an employer pension plan, but you need to ensure that you are on track to meet your retirement age and income goals. If you're a business owner, you may be able to use the equity in your business to create retirement income. A comprehensive, professionally prepared financial plan can help you gain perspective on your current position and determine whether you need to make any changes to meet your retirement goals.

4. Manage Risk Using Insurance

You've worked hard, saved, and invested wisely to get where you are. A comprehensive insurance plan can help you protect your current assets and your future holdings. Insurance is an indispensible and very flexible wealth-planning tool that not only covers the major "what-ifs" in life but can also help build and protect wealth during your lifetime and when your estate is settled. An insurance plan looks at how you can maximize insurance to provide financial security for you and your family in case the unexpected happens, shelter your investment and estate assets from taxes, and provide tax-free retirement income and tax-free death benefits.

5. Establish a Power of Attorney (Mandate in Anticipation of Incapacity in Quebec)

A Power of Attorney is an excellent tool that should be a key part of your financial plan. It is most important in case you become incapacitated and cannot perform normal daily tasks for yourself. This could include paying bills and managing your investments. It is important to understand how the Power of Attorney is created and the nature of the authority you are giving to your attorney (called a mandatary in Quebec). This helps ensure that you create a Power of Attorney which contains the clauses necessary to enable your attorney(s) to effectively carry out your wishes. A Power of Attorney must generally meet certain statutory requirements to be valid and these requirements may differ from one jurisdiction to another. It is strongly recommended that you have a qualified legal counsel prepare your Power of Attorney.

6. Reduce Volatility with a Well-Diversified Portfolio

Diversification is considered to be one of the golden rules of investing to reduce risk and may boost your return potential over time. Investor surveys indicate that wealthy investors open multiple accounts of the same type, with different financial institutions and different advisors, either because it simply happened this way over time or because they believe it to be an effective way to diversify. But diversification is really about how you invest your money – not where you keep it. Experienced investors know the "golden rule" of diversification: a portfolio should not be too heavily weighted in one region, sector or asset class. Investing through multiple accounts and multiple advisors instead of consolidating your assets with one trusted advisor may impede proper diversification and potentially expose you to greater risk.

Tips for Transferring Wealth and Creating a Legacy

7. Plan Your Business Succession

A family-owned business frequently represents a significant portion of an owner's estate. So, if much of your net worth is tied up in your business, you may be less well diversified than those who have a more traditional retirement portfolio. Unlike a salaried employee, it's up to you to fund your own retirement, so you need to create a strategy. Are you planning to sell your business to fund a financially secure retirement? Have you considered establishing an Individual Pension Plan? The decisions you make will have far-reaching implications for you and your family. Planning ahead can protect the business you've built and ensure your future prosperity. Your wealth advisor and independent tax and legal counsel can help you make the critical decisions, wherever you happen to be in your business' life cycle.

8. Choose Your Estate Executor (Called a Liquidator in Quebec)

When you are choosing an executor, consider the assets that he or she will have to administer and the way in which you wish your estate to be managed. Do you have complex business affairs or do you wish to have assets managed in trust for an extended period of time? If so, who will be the appropriate choice of executor? You may wish to name younger family members, professional tax or legal counsel, or friends who have financial or business experience. It is a good idea to name an alternate to any primary executor you appoint in case your first choice of executor is unable or unwilling to act. When making an appointment, check that the person you choose is willing to act.

For many reasons, such as family friction or the likelihood that your estate is complex, you may wish to name an independent executor such as a trust company. Trust companies are experts in estate, trust and taxation matters. They are equipped to handle complex estates and can ensure that your beneficiaries are treated fairly and impartially. Alternatively, many trust companies offer services to assist executors in performing their duties.

9. Develop a Tax-Efficient Estate Plan

Strategies that result in tax minimization can be a significant factor when you are designing your estate plan. A tax-efficient transfer of your assets may involve having assets flow outside your estate, for example, by designating beneficiaries for your registered plans or incorporating insurance or trust planning into your overall design. There are also ways to maximize the tax-deferral opportunities for those assets that pass to your beneficiaries under the terms of your Will. A well-designed estate plan can leave a greater portion of your estate to your beneficiaries rather than the tax man, and can reduce unnecessary delays and expenditures which can deplete your estate. It is also important to review your choice of beneficiaries on your registered plans regularly to ensure you understand the consequences of the designations you have made, that they reflect your intentions, and that they do not conflict with your Will. Your legal counsel can guide you in designing and implementing an estate plan that is suited to your family's needs.

10. Consider Charitable Gifts in Your Will

Do you wish to make gifts in your Will to your community or the causes that are close to your heart? Charitable gifts frequently form part of an estate plan. They can take numerous forms and they may produce a valuable tax credit on your final tax return. That credit can save your estate a considerable amount of tax if you have RRSPs or holdings with large unrealized capital gains that will be deemed to have been disposed of on your death. In the year of your death and the preceding year, your executor may be able to claim a credit for donations up to 100% of your net income. Of course, your charitable giving intentions may change over the years. When you make a bequest in your Will, you can revoke or change the gift simply by revising your Will. If you have charitable intentions, discuss your wishes with your tax and legal counsel. They can guide you through the rules and the different charitable giving options that are available to help you ensure that your charitable giving goals will be realized.

Taking the Emotion Out of Investing

One of the biggest obstacles to successful investing is a character trait that is innate in all of us. It is responsible for making us feel sadness and anger, experience joy and fall in love. Emotions make us human but they can also drive us to make counterproductive and sometimes poor decisions.

Many of the most common mistakes that individual investors make can be traced back to one factor: emotions. When the markets go up, investors tend to become overconfident and take risks they normally wouldn't. When they go down, they get nervous or even panic, and make hasty decisions they later come to regret.

Although it is impossible to take the emotional factor out of decision-making entirely, there are ways to potentially minimize and even mitigate its effect to prevent it from jeopardizing our investment goals.

Investors who adopt a more disciplined approach to their personal portfolio decisions, similar to institutional investors, may find that their emotions have less of an impact on their investment choices. The terms "institutional investor" or "institutional investment approach" usually refer to organizations that have significant assets to invest over a long time horizon. Pension funds, foundations, endowments and large corporations are all common examples of institutional class investors.

Although individual investors may not have access to the same resources and level of expertise that are available to institutional investors, individual investors can still apply some of the same basic principles when implementing an investment strategy. In this article, we outline six practices that an investor with a portfolio of any size and a reasonably long time horizon (seven to 10 years) may want to consider adopting in order to help achieve a more disciplined investment approach.

Build and Follow a Plan

Like everything in life, an effective plan is often a critical part of a successful outcome. Even individuals who have an effective plan in place can encounter challenges when trying to follow that plan over the long term. One primary reason for this is the influence of emotions, particularly in times of uncertainty. Individuals, unlike institutions, tend to be affected on an emotional level by changing external factors and can be tempted to abandon their plans. Individual investors tend to underperform the markets, largely because they make frequent changes in response to market fluctuations. Emotion can influence an individual to buy or sell at the worst times but having a commitment to a plan can help rein in emotion, even when the decisions that are being made seem counter-intuitive.

Janet Engels, Director of the Private Client Research Group at RBC Wealth Management, comments that emotion can be the biggest issue for individual investors. She adds that the key to success is keeping emotion out of decision-making. Institutional investors recognize this. They use detailed reference documents and frequently have a board of individuals providing input. There is a system of checks and balances in place so that decisions are not made in "the heat of the moment."

Dalbar's *Quantitative Analysis of Investor Behaviour (QAIB) 2012* examines how investor behaviour affected performance results over the 20-year period ending December 2011. The report examines the various psychological factors of behavioural finance, one such factor being "loss aversion." When investors lose confidence in the market, they frequently fly to the perceived safety of lower-risk alternate investments. However, this can result in a portfolio that fails to represent their investment goals. It is important for an investor to evaluate the appropriateness of investments of all risk levels even in times of uncertainty.

As part of the investment planning process, individual investors need to recognize that they are human and may make emotional decisions. By recognizing this possibility, the investor can take steps to remove temptation. The first essential steps are setting reasonable expectations and understanding the level of risk that is right for the individual investor. Ultimately preparation is key. Investors who are prepared and confident about their plans will be less likely to make emotional and possibly poor decisions down the road.

Determine the Asset-Allocation Model for Your Portfolio

While there is much discussion about tracking to market benchmarks and indices, these are by and large arbitrary numbers, which may not be relevant to the personal situation or objectives of an individual investor. These benchmarks often include a breadth of companies that are inappropriate for an individual portfolio. In addition, many benchmarks have greater exposure to certain industries, such as banking, for example, and limited exposure to other industries, such as technology.

Maarten Jansen, Vice-President of the Portfolio Advisory Group at RBC Dominion Securities, says that market benchmarks may not be suitable for the needs of individual investors. Individuals should determine an asset allocation to generate the rate of return that is appropriate for their needs and goals and consider what combination of equities, fixed income and cash they need to achieve that rate of return. This can be preferable to a broad benchmark that is not necessarily reflective of their objectives and the risks they are willing to take.

Another factor to consider is the risk-return trade-off. For example, if an investor requires a five per cent rate of return and has a portfolio that is being managed to generate a 10 per cent rate of return, it may be prudent to consider whether the added risk and potential volatility in the portfolio is worth the anticipated additional return. The higher return will generally come at greater risk. Investors may benefit from recognizing what they need as opposed to what they want.

Monitor Your Progress

It is important to have regular reviews with your wealth advisor (quarterly, semi-annual or annual) to keep on track towards your stated investment objectives. Without regular tracking, investors can find themselves veering off plan, both psychologically and practically. The review process can be invaluable in helping to highlight whether your goals have changed in response to personal circumstances or market fluctuations. Then you can make adjustments as required, keeping in mind that while your plan may require minor tweaks here and there, the core of the plan, if well thought out initially, should remain largely unchanged.

As with any long-term plan, there will inevitably be times when the plan is ahead of target and other times when it is behind. Investors need to be prepared for this. History reveals that investment returns never occur in a straight line. There are always market fluctuations but forward planning enables the investor to consider both positive and negative potential occurrences in advance and to be emotionally prepared for both.

Have a Rebalancing Discipline

One of the biggest pitfalls for many individual investors is the failure to rebalance the portfolio. Establishing and adhering to a defined asset-mix in an investment plan gives the portfolio a greater chance of long-term success. In fact, regular rebalancing can potentially add significantly to long-term performance. However, investors are often reluctant to rebalance due to the inherent conflict between taxation and rate of return.

Rebalancing is essential to help manage and maintain an acceptable level of risk. For example, a portfolio that may have initially been 50 per cent stocks and 50 per cent bonds could easily become an 80/20 split without rebalancing. If a security increases significantly in value in the investor's portfolio and the investor does not take steps to rebalance, the portfolio may become highly concentrated in that single investment. This could be catastrophic if that security significantly decreases in value. Investors may potentially be able to preserve more of their wealth and reduce risk by regularly monitoring and rebalancing their portfolio.

In both bear and bull markets, having a pre-planned rebalancing schedule as part of an investment strategy removes the need to make an emotional decision. It becomes an automatic process so the portfolio is rebalanced regardless of what's happening in the markets. Jim Allworth, Co-Chair of the RBC Global Portfolio Advisory Committee, comments that rebalancing is really about managing the psychology of the individual investor.

When emotions are guiding the decision-making, the decision to rebalance the portfolio can be difficult. Intuitively, no one wants to buy when the markets are down or sell when the markets are up. However, that is exactly what is needed to keep the portfolio balanced. Rebalancing creates a structure that provides a long-term balance of stocks, bonds and cash, and this can help investors through big market dislocations or downturns. When the process is built into the greater investment strategy, there is a disciplined approach, like an institutional investor, and this ultimately creates a smoother investment ride.

Know When to Partner

Institutions often have a board of directors that is accountable for managing funds. In cases where the board members lack expertise, they employ consultants to help them find appropriate solutions. Individual investors can harness the lessons of this strategy and should be encouraged to consider a team, not just an individual, to assist them in meeting their wealth objectives. A good professional advisor will generally have access to estate, legal, tax, and financial planning expertise within their business.

By building a team that collaborates, individual investors, like their institutional counterparts, can benefit from different perspectives and a broader range of expertise. It is also important to consider an integrated solution that combines investments, credit and banking in a single relationship. In this way the team can optimize its effectiveness and provide maximum benefit by giving everyone a view of the big picture.

Putting It All Together

Fear and lack of experience are significant factors that may impede individual investors from implementing a disciplined investment approach. It is difficult to set aside emotion in an environment where market swings, financial media coverage and forecasts are a daily occurrence that can skew judgment. There is a constant barrage of information about local, national and global issues affecting markets in Canada and around the world.

However, for the investor who can block out the distractions, accept that they need to remove as much emotion from their decision-making as possible, find the right investment team and effectively implement the strategies they have designed, adopting a disciplined investment strategy can provide significant long-term benefits.

“Whether I shall turn out to be the hero of my own life, or whether that station will be held by anybody else, these pages must show.”

Charles Dickens, David Copperfield

Mind the Gap

Canada's baby boomers need Power of Attorney planning to protect themselves

Many of us want to be the hero in our own life story. Perhaps Charles Dickens himself wondered what happens when you can no longer be the writer of your own life story, and who will author your epilogue – the final chapter that will sum up what your life stood for and meant to you, your family and friends.

Fortunately for us, and not-so-fortunately for Dickens, a Power of Attorney document can help you choose the author who will continue writing your story when you are no longer able, so you can be remembered for what you accomplished in your life, instead of a final chapter filled with family dispute, fractured relationships and dissipated assets. Establishing a Power of Attorney (Mandate in Anticipation of Incapacity in Quebec) is a key part of any estate plan, and when reviewed and kept up-to-date, it can help ensure that your original plans for your wealth, assets and personal care are fulfilled as you intended. This planning is vital as the "gap" between "healthy" life expectancy and average life expectancy is nine to 11 years for Canadians.[1] However, 71 percent of Canadian adults do not have a signed Power of Attorney.[2]

You probably give significant thought to the investment professional you choose to manage your investment portfolio, the legal counsel you choose to draft your Will, the realtor you choose to sell your house or the contractor you choose to repair it. You may conduct interviews or have initial consultations to ensure that they understand and respect your preferences, and feel comfortable that you connect on a personal level. But what kind of rigour do you use to choose the person who will make financial decisions for you and be in control of your assets, at a time when you are losing or have lost the ability to do so yourself?

While you may be aware of some of the potential risks if you do not have a Power of Attorney, the changing nature of family dynamics, caregiving and fraud in Canada means that, increasingly, there are risks involved even when a Power of Attorney is in place. Canadians should therefore use the same due diligence process to select an attorney or attorneys (called a mandatary in Quebec) as they would use to select their other professional advisors.

This article will discuss how you can protect yourself with a Power of Attorney, and important considerations to mitigate your risk when choosing one or more attorneys. For specific estate planning advice and to establish a valid Power of Attorney agreement, please speak with a lawyer or notary in Quebec who specializes in estate planning.

Powers of Attorney for Property and Financial Management

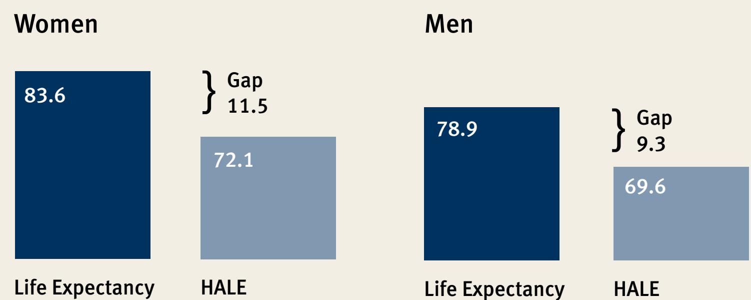
A Power of Attorney is a legal document in which one person gives another person or people the authority to act on their behalf. A standard Power of Attorney for property empowers your attorney to legally make decisions about your finances and property on your behalf and that authority survives in the event that you become incapable of making these decisions yourself (as such, these attorneys may be described as "enduring" or "continuing"). In some provinces and territories, a different legal document may be used to delegate decisions about your personal care, or one document will contain your authority for an attorney to make both personal care decisions as well as financial and property decisions.

Typically, a Power of Attorney for property is only used if the person giving that authority (the donor) is unable to act or make decisions for themselves, although legally the attorney may have immediate authority even if the donor is still completely capable. The terms of the Power of Attorney document, the conditions for its release, and legislation in the donor's province or territory of residence will determine when the Power of Attorney is effective and may be used.

This article will focus on Power of Attorneys for managing financial and property matters after becoming incapacitated. Please speak to your legal counsel to tailor your Power of Attorney to your personal circumstances.

Canadian Health Expectancy

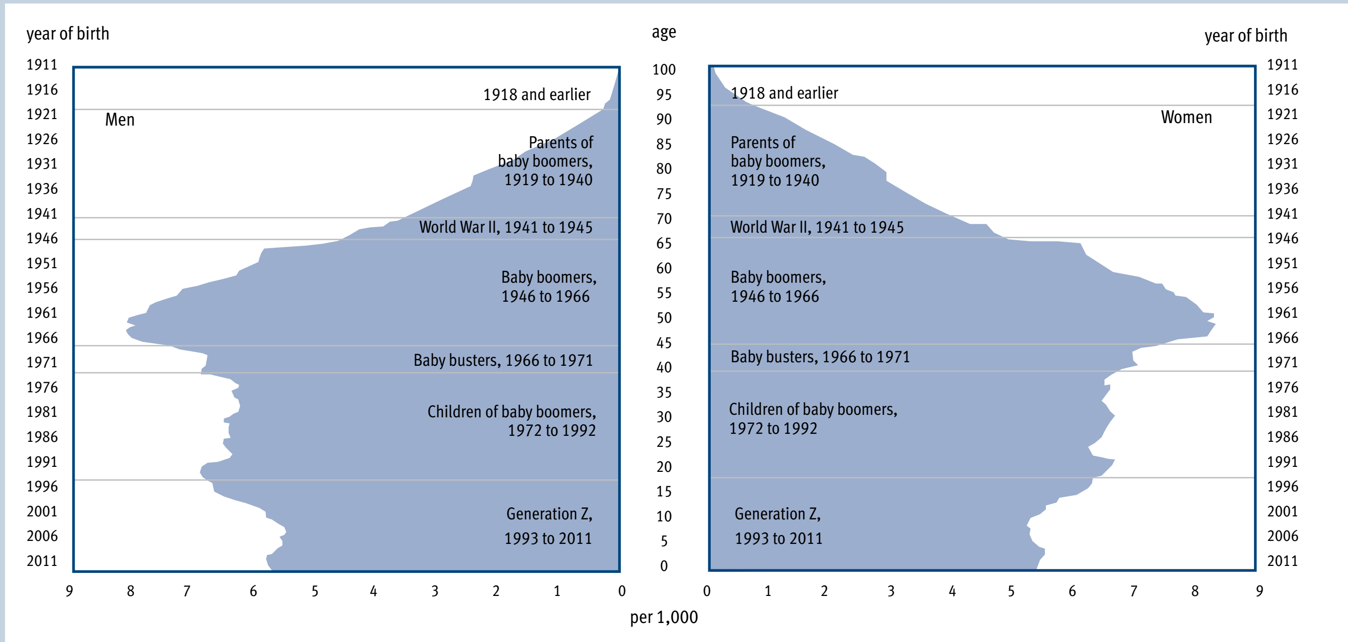
In part due to higher standards of living and advances in medical science, Canadians are living longer lives than even a generation ago. However the "gap" between average life expectancy and "healthy life expectancy" – taking into account the number of healthy or disability-free years that men and women can expect to live – tells another story. Healthy life expectancy for men and women, respectively, is 69.6 and 72.1.[3] On average, then, Canadian men and women continue to live 9 to 11 years past the time when they are "healthy."



Average life expectancy and health-adjusted life expectancy (HALE) by sex, at birth in years, Canada not including Quebec, Nunavut and N.W.T.

Portrait of Generations in Canada[4]

Among Canadian men and women, baby boomers represent the largest segment of the population. Many people in this cohort may lose some cognitive function as they age, making a valid, up-to-date Power of Attorney more important than ever.



The Aging Baby Boomer Generation in Canada

As a greater number of Canadians grow older and prepare for the possibility of incapacity, planning ahead and establishing a Power of Attorney becomes more critical than ever.

A disproportionate number of Canada's population was born between 1945-1965. This cohort (commonly known as "baby boomers") has made a significant impact on all aspects of Canadian society, and will continue to do so. In 2011, nearly 15 per cent of the Canadian population, representing nearly 5 million individuals, was 65 years of age or older.[5] That number has increased by almost 14 per cent since 2006, when the number of Canadians aged 65 and older was 4.3 million. By the year 2036, that number is expected to double to reach 10.4 million, and by 2051, about one in four Canadians is expected to be 65 or over.[6]

As the baby boomers age, there is expected to be an "attorney boom" for the management of boomers' assets. This means that there will likely be even more attorneys who may live or work in a different jurisdiction, lack financial or organizational ability, or be struggling to manage their own family's finances at the same time. This, coupled with governments' increased interest in regulating an attorney's activities, has resulted in a more complex task for the attorneys.

Planning Ahead for Incapacity

More than 100,000 Canadians will develop some form of dementia this year – in addition to over 500,000 Canadians who currently live with dementia.[7] Because the rate of dementia increases significantly over the age of 85, more and more Canadians will continue to suffer from illnesses that affect cognitive function as the baby boomers age.[8]

Given the increasing likelihood that we may need assistance with decision-making at some point in our lives, you must consider whether you do nothing and have your loved ones potentially incur a lengthy and expensive court process to have someone appointed to act for you, or whether you want to have a say in who manages your affairs when you are no longer able to do so.

A Power of Attorney is a way to protect your best interests, giving you control as to who will speak on your behalf when you are not able to do so, while at the same time providing guidance on how you wish to be cared for, and how to continue to manage your assets during your lifetime.

Without a valid Power of Attorney in place, your province or territory will have specific rules for guardianship and decision-making if you are unable to manage your own financial affairs. Many people assume their spouse or next of kin will

automatically be assigned the responsibility (or accept it willingly). However, without a court order, your spouse and next of kin generally will not be able to access your financial information and assets. Without such access or ability to deal with your assets, your family must apply to the provincial government or court to have someone appointed to manage your affairs. A court-appointed guardian may also be required to post a bond with the court for an amount related to the total value of your property. This process can be lengthy and expensive. Competing applications can also be filed, adding to the cost and timing.

Financing Personal Care

Your attorney can play a critical role in the care you receive as your health-care needs change over time. Your attorney must manage your assets wisely and ensure that there are sufficient assets available to pay for that care. You may not know now what your needs will be in the future, such as whether you will require professional care at home or in a long-term care facility.

Many people believe that the federal or provincial government will handle the cost of this care.[9] While the government may provide some financial assistance, there are limitations that require many people to pay for certain care services, or higher levels of care, out of their own pocket. These costs can be significant; accommodation in a long-term care facility such as a retirement or nursing home can range from $1,600 to $9,000 per month depending on the room type and the level of government funding available in your province or territory – a cost that will likely increase over time.[10]

One key role your attorney will play is in managing your finances to cover the costs of your care. For example, if you have a $1 million investment portfolio, your attorney will determine which of your investments must be liquidated to pay for care if your income is not sufficient to cover these costs, and how the portfolio will be managed to ensure that your best interests are met while still reflecting your long-term objectives for your estate.

Although this article's focus is on the importance of an attorney to protect your financial wellbeing, there will inevitably be some crossover with your personal care. If your attorney for financial matters is not the same person as for personal care, these people will need to work together closely to ensure your best interests are met. For example, your attorney for personal care is responsible for making decisions about your healthcare, shelter, clothing, hygiene and safety. If you are incapable and your attorney for personal care makes a decision to have your care provided in a long term care facility, your attorney for property will be called upon to ensure you have the financial resources to pay for the long term care facility.

Choosing Your Attorney

It may seem intuitive to appoint your spouse, your adult child or a close friend as your attorney. The decision on who to appoint may be even more important than choosing the Executor (called a Liquidator in Quebec) of your estate, since you will be living to experience the consequences should something go wrong as a result of your choice. As well, mismanagement of your assets during your lifetime could mean that the terms of your Will and estate plan are not carried out as you expected due to a diminished estate.

When selecting your attorney(s) you should therefore use the same due diligence process as you would use to select your other professional advisors such as your lawyer, notary, accountant or other trusted professional. In choosing an attorney, certain key factors should be considered, including:

- Your attorney's financial acumen
- Your attorney's location and ability to travel, if needed
- Your attorney's age and stage in life
- Your attorney's organizational skills
- Your attorney's potential for emotional bias

Will Your Attorney Have the Required Financial Acumen?

Your attorney is a fiduciary who must act diligently, honestly and in good faith, for your benefit alone. Depending on your province or territory of residence, the responsibilities of an attorney may include making expenditures on your behalf for your support and care and for any of your dependants, consulting with your supportive family and friends, managing your assets, keeping detailed records of all transactions involving the your property, and ensuring your tax returns are filed. These tasks can prove burdensome, particularly if your chosen attorney is inexperienced in managing finances. For a detailed listing of individual tasks, please see the Appendix.

There is a developing trend in provincial and territorial legislation that places more scrutiny on attorneys and their duties around record keeping and accounting, similar to consumer protection laws. While attorneys are held to high standards, these trends demonstrate that more time and effort may be required of attorneys to demonstrate that they are fulfilling their duties, with potential legal consequences if they cannot demonstrate this.

It is therefore critical to ensure that the person(s) you choose has the time to deal with the administration associated with acting as attorney, and has the aptitude to deal with legal responsibilities or potential liability involved in carrying out their duties as attorney.

How Far Away Does Your Attorney Live?

Your choice of attorney may not necessarily live in the same province or territory or even the same country as you do. Perhaps your family members have emigrated from their home country to pursue career opportunities in another part of the world. Parents and grandparents may live in one country, while their children and grandchildren (sometimes from multiple relationships and marriages) live in another.

If your attorney lives in a different jurisdiction than you, there may be additional risk due to the legal, logistical and administrative complexities in managing your affairs from afar. For example, your assets may be located in multiple jurisdictions around the world; you may own property in a number of geographic locations and divide your time between these homes. If this is the case, you will require Power of Attorney documents that are effective in each jurisdiction, as a "general" Power of Attorney prepared in one place may not be legally effective in another. They may have practical challenges, such as physical proximity, as well as compliance issues in carrying out their duties as your attorney. For example, if your attorney lives in the U.S., a financial advisor in Canada who is not registered under U.S. securities laws will not be authorized to give investment advice to, or take investment direction from, an attorney who is a U.S. resident.

Choosing an attorney who lives some distance away may also have an impact on the attorney's own career and stress levels, particularly if the attorney is also providing or arranging personal health care. Job absenteeism is also affected by the distance between an attorney or caregiver's home and the person for whom they are caring. A survey of Canadians age 45 and over who were providing care to a parent or parent-in-law showed that 13 per cent lived in the same household, 46 per cent lived in the same neighbourhood (within 30 minutes on foot or by bus), 20 per cent lived in a surrounding neighbourhood or community (less than one hour by car), 15 per cent lived one hour to less than half a day by car, and 7 per cent lived more than half a day by car.[11]

As the intensity of the care needs increase, and more time is required to assist the care receiver, the travel time can become burdensome, especially in poor weather conditions or if there is a significant financial cost to the travel.

Will Your Attorney Have Time to Manage Your Affairs?

In some cases, an attorney's tasks span several years, and the level of care needed may escalate over time.

If you are considering an adult child as your attorney, consider whether he or she may be part of the "Sandwich Generation." The term Sandwich Generation is used to describe a group of people aged 30-50 years old who are handling the financial and emotional stress of caring for both their parents and their dependent children, while preparing for their own future stages of life. Entering into a period of their lives when they would normally start planning and saving for their own retirement in earnest, members of the Sandwich Generation are suddenly finding themselves spending time and savings not only caring for their children, but also caring for aging family members and even friends. People are marrying and having children later in life, meaning they may have financial obligations to children while at the same time having to care for their own parents. While families have always had to deal with the care of older parents and younger children at the same time, a number of factors have combined to make this the start of what's expected to be a more significant and enduring trend.

Consideration should therefore be given to the competing time pressures of children, a career and caring for aging parents if the person you are considering appointing as attorney may be a member of the Sandwich Generation when called upon to act.

You should also consider what will happen if the person you have appointed as attorney is not physically or emotionally well when the time comes to act as your attorney. If you still have capacity, then you can appoint another person to act on your behalf. However, if you do not have capacity, the co-named attorney or your alternate choice (if you have named one) will need to act. If you do not have an alternate or your alternate is also unable to act, someone may have to be formally appointed to manage your affairs.

Will Your Attorney Be Emotionally Biased?

If your attorney is related to you, they may have an emotional bias that prevents them from carrying out your wishes. Difficult family dynamics can also impact the decisions that are made by your attorney. When family members are attorneys, they may feel pressure from other family members or friends to act in a way that may not be consistent with what you would have wanted. If your attorney is emotionally vulnerable because of your incapacitated state, or prone to influence from their spouse or other family members, it may be difficult for them to act with the impartiality required of attorneys. Finally, your attorney can be in a potential conflict of interest if the spending for your care will affect their potential inheritance.

Appointing Multiple Attorneys

Given the abovementioned factors, you may wish to consider appointing more than one attorney. If you appoint more than one attorney, it is important to understand the difference between the various appointments you can make. For example, you can require that your attorneys act together ("jointly") or you can give your attorneys the flexibility of carrying out their duties separately or together ("jointly and severally"). Many people appreciate the inherent safety in having more than one decision maker acting together, as it reduces the chances that your assets will be mismanaged.

Requiring your attorneys to make joint decisions with respect to all your financial affairs may not suit your particular circumstances. You may therefore want to consider granting independent decision-making power to separate individuals for different tasks. For example, if spelled out in your Power of Attorney documents, you can arrange for one person to conduct day-to-day banking and one person to make investment decisions. You can also differentiate the roles by having one general Power of Attorney document and one limited Power of Attorney document. It is important to seek legal advice so that you understand what each attorney can do on your behalf alone, what actions must be taken jointly and how to deal with conflicting instructions.

Appointing a Trust Company as Attorney

For many reasons – including those above – some people choose a trust company to act as their attorney, a company licensed to provide this service.

Working with a trust company can bring confidence to your estate planning. You will have a written, signed agreement as to the duties that will be carried out on your behalf. While your family members may not be familiar with estate planning laws or terminology, a trust company's advice is timely and based on current estate planning requirements and regulations. Most trust companies, as providers of these services, can tailor a service package to your needs, comprising custody, recordkeeping and accounting, and support for the investment of trust assets.

Protecting Yourself Against Senior Abuse

Based on average data, it is estimated that 4-10 per cent of Canadian older adults experience some form of abuse.[12] While senior abuse can include physical, verbal, psychological and sexual abuses, the most prevalent form of abuse appears to be financial abuse.[13]

Despite your best intentions, when you grant authority to another individual under a Power of Attorney, there is always the possibility that they may abuse it. Unfortunately, more and more people acting as attorneys are finding themselves embroiled in legal issues. Criminal liability may result if an attorney is found to have engaged in financial abuse or theft, punishable under section 331 of the Criminal Code of Canada, R.S.C. 1985, c.C.-46 (the "Code"). Under section 334 of the Code, theft over $5,000 is punishable by imprisonment.

In December 2012, the federal government passed legislation that provided for stiffer sentences for those who take advantage of older Canadians. The Protecting Canada's Senior Act, S.C. 2012, c.29 received Royal Assent on December 14, 2012, and came into effect 30 days later.

A Growing Trend to Greater Accountability in Canadian Power of Attorney Legislation

Stories of disputes involving uses and abuses of Powers of Attorney and other abuse of seniors and the vulnerable are becoming more commonplace and evidence of the impact and effect can be seen everywhere from government advertisements to changes in legislation. The scrutiny applied to the administration of the property of others under a Power of Attorney will continue to increase in the future. Examples of this trend to greater accountability for attorneys can be seen in amendments to provincial legislation such as British Columbia's changes to the Power of Attorney Act. Mandatory reporting of abuse is also making its way into many provincial laws.

Under British Columbia's new legislation, your attorney may make gifts, loans and charitable donations that you would have made, but only up to a maximum of $5,000 and only if you will have sufficient property left over to meet your needs (and the needs of your dependants). In addition, the legislation now sets out the duty to account for your assets and liabilities, including an estimate of their value.

Although unlikely to pass into law in its existing form, the Protection of Vulnerable and Elderly People from Abuse Act (Powers of Attorney) was presented before the Legislative Assembly of Ontario in 2011. A noteworthy item was that the Bill proposed an unprecedented requirement that an attorney provides annual accounting to Ontario's Public Guardian and Trustee and, if requested, to the donor who appoints the attorney.

As well, the Bill proposed to create a register of attorneys containing, if the donor chooses to provide it, the name and address of the donor and the attorney, any restrictions on the attorney's authority, the date the attorney's authority took effect and the persons to whom the donor authorizes the Public Guardian and Trustee to disclose information.

While the changes enacted in British Columbia and proposed changes in Ontario might serve the intended purpose to protect vulnerable citizens, they will impose significant obligations on attorneys, who will need to be prepared.

Example of Senior Abuse by an Attorney

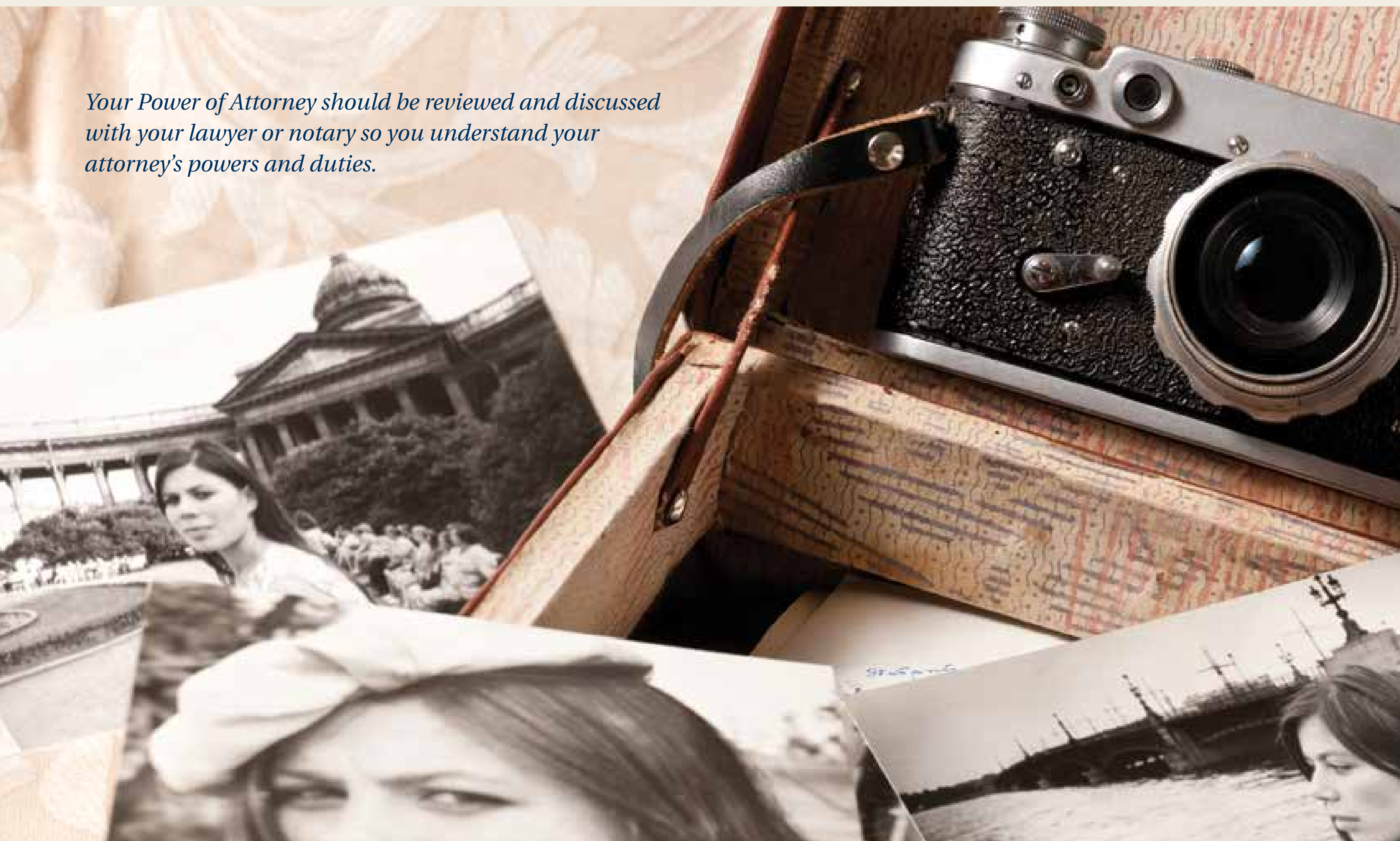
*Names have been changed and circumstances altered.

One 2011 case of senior abuse from eastern Canada demonstrates the value of a responsible attorney and the importance of due diligence in appointing one.

Henry* was the nephew of the victim, Samantha, and the beneficiary of her Will. In 2009, Henry obtained a Power of Attorney for property over his aunt's affairs. Samantha lived alone in her home and had a bank account with some savings. In March of that year, the aunt's house was transferred into joint tenancy with Henry. A doctor's report indicated that Samantha was suffering from a severe form of chronic dementia. Shortly thereafter, Henry placed his aunt into a private nursing care home, signing a contract as under the Power of Attorney. The care home only received three payments but Henry arranged no further payments for Samantha's care. Henry sold his aunt's house and took control of the proceeds. He removed the remaining funds from his aunt's bank account and then he himself moved to a different province. In addition to taking all the funds, Henry arranged to receive his aunt's Old Age Pension (OAP) and Canada Pension Plan (CPP) at his new address. Sadly, Henry made no further contact with the nursing home or his aunt. Samantha was left to languish in a private care facility, alone and without any family support. She had no money for basic personal care not covered by her room and board, including hair cuts, clothing, foot care and incontinence supplies.

Eventually, Samantha's situation came to the attention of the Public Trustee's office who was certified as her guardian. The Public Trustee commenced a civil lawsuit against Henry who was also charged with theft of his aunt's property. Henry entered a plea of "guilty," repaid the amount of the theft and was sentenced.

Your Power of Attorney should be reviewed and discussed with your lawyer or notary so you understand your attorney's powers and duties.



Checklist of Attorney's Duties

Many people consider it an honour to be considered as an attorney, and to be entrusted to the number of important duties as part of the role. From reviewing your Will to managing your banking, insurance and investments, the following list of duties, while not exhaustive, is significant enough to warrant special consideration for the person who will ultimately manage your affairs on your behalf.

The extent to which these duties should be performed by the attorney will depend on the circumstances of the donor of the Power of Attorney and, as such, not all may be applicable. If the donor is capable, the Attorney should follow the instructions of the donor as to which tasks should be completed on his or her behalf.

1. Locate and review the donor's Will and document any specific instructions concerning property and bequests
2. Notify all banks, brokers and financial institutions with whom the donor has business that you are acting as the donor's attorney; confirm whether the donor created any other Power of Attorney documents with them and redirect statements if necessary
3. Cancel debit card(s)
4. Cancel credit card(s) and return cards to issuers
5. Check Bank of Canada website for unclaimed balances in donor's name
6. Locate and document all original investment certificates, stocks, bonds, property deeds, etc.
7. Notify appropriate institutions and redirect annuities, pensions and registered funds
8. Review the suitability of the investment portfolio and any surplus cash, making any necessary and allowable adjustments to meet cash requirements
9. Identify and document all other personal assets
10. Notify Canada Revenue Agency, provide them with a copy of the Power of Attorney document and request a statement of account showing all outstanding taxes, refunds and instalments paid to the current date
11. File any outstanding and ongoing tax returns and pay all income taxes owing
12. Notify the appropriate authorities and redirect CPP/QPP, OAS, Veteran's Pension Payments and GST/HST credits
13. Notify insurance companies or other institutions regarding auto, home, disability or life insurance that you are acting as the donor's attorney and redirect statements if necessary
14. Ensure adequate insurance for assets and upkeep of property
15. Set up disability insurance payments, if required
16. Cancel auto registration and insurance, if applicable, and collect any refunds
17. Investigate and record all debts owed by the donor
18. Arrange payment of debts with any surplus cash and obtain receipts
19. Create a complete list of the donor's assets and liabilities as of the date of your first action
20. Establish an ongoing list of acquisitions and dispositions made on the donor's behalf (e.g. money received, investments made, liabilities incurred or discharged)
21. Create a monthly budget consisting of all expected income and payments required to ensure the donor's immediate and ongoing financial needs can be met
22. Document (including assets used in calculation) any compensation taken for your attorney duties
23. Consult with the person acting as attorney for health care regarding health care, safety and shelter for the donor; obtain a written description of decisions made and make all necessary financial arrangements
24. If there is no named attorney for health care, obtain legal advice regarding the donor's current circumstances
25. Notify personal attendants, housekeepers, gardeners and other staff of your role as attorney, as advise as required
26. Initiate sale of assets if required
27. Cancel memberships and other subscriptions if required

RBC Run for the Kids
In Support of Sunnybrook Hospital's Family Navigation Project

Anyone who knows someone who suffers from a mental illness or addiction is aware of the effects that it can have on an individual as well as their family. The challenges can be particularly difficult when it is a young person who is suffering, because often this is the time when different diagnosis and treatment options are explored.

Recently, the topic of children's mental health has begun to receive increased attention in Canada. It is being brought into the spotlight with the help of Dr. Anthony Levitt of Sunnybrook Hospital in Toronto. Dr. Levitt is Co-Chair of the Family Navigation Project, a new program that is being developed through Sunnybrook Hospital's Youth Psychiatry division.

The Family Navigation Project will be the first of its kind in Canada to assist families with finding the correct channels to locate the help they need when it comes to youth mental health. Currently, there is no direct path to finding the services and resources that are available. The project will help by pairing expert navigators with families that are in need to offer assistance in steering them through the complicated mental health care system.

"We're trying to create a place where families in crisis can connect and find the right resources. Every day all over this province, lives are at risk. It is definitely past time for this kind of resource," says Dr. Anthony Levitt, Co-Chair, Family Navigation Project.

The Family Navigation Project will be a non-profit program designed specifically for 14- to 24-year-olds with mental health or addiction problems. By building relationships with treatment providers, centres and programs, the Family Navigation Project will help by facilitating connections for families and youth that are in need. Once established, the goal is to reach 1,000 families a year and to act as a model for similar programs to come.

"As many as two million youth in Canada are struggling with a mental health or addiction problem, and yet only one in five will get specialized treatment," says Dr. Levitt. "The Family Navigation Project aims to assist with getting a higher percentage of youth the help they need and deserve."

To help launch the Family Navigation Project, the RBC Run for the Kids was announced in May. The run took place on September 21 and 22 and registrants had the option of participating in a 5K or 25K race. Children were also welcome, and could run or walk a total of 15K as part of the specially-designed Youth Challenge: 10K in the four months prior to the day of the event, and the final 5K walk/race on the day of the event. The funds raised from the race will go towards establishing the Family Navigation Project at Sunnybrook in early 2014.

RBC has a strong commitment to children's mental health through the Children's Mental Health Project, and since 2008, has donated over $16 million to more than 200 organizations. Since many mental health issues develop during adolescence, early intervention is an important tactic for treating and managing mental illness. RBC also aims to reduce the stigma that is often associated with mental illnesses by supporting education programs that increase awareness and understanding regarding youth mental illness. Through early diagnosis, treatment and education, many individuals can go on to lead happy and healthy lives.

To find out more about the RBC Run for the Kids, visit www.rbcrunforthekids.ca

To learn more about the Family Navigation Project, visit www.sunnybrook.ca.

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