



## Wealth & Family Law: Part 2 - Matrimonial Regimes

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**Keith:** Welcome to the Empowered Investor. My name is Keith Matthews. And in today's show, we're covering the topic of family law, in particular, the division and separation of assets. As we mentioned in last week's show, Canada has two legal systems that drive this topic. For those living inside the province of Quebec, it is the Civil Code. For those in the rest of Canada, it is common law. What we've decided to do is create a couple of shows per legal system to walk our listeners through this very important subject matter. In today's discussion, part two for the Civil Code, we're going to cover matrimonial regimes. For that, we have an incredible guest speaker, Patricia Foucault. She will be interviewed by Ruben Antoine, my co-host. Please enjoy today's show, and we look forward to getting your feedback.

**Ruben:** Welcome back to this episode of the Empowered Investor on family law, especially the patrimonial aspect of family law. We have our special guest, Patricia, with us. Welcome back, Patricia.

**Patricia:** Thank you.

**Ruben:** So, in part one of this series, we went through what falls under family patrimony. To do a quick recap, it would be the family house and the furniture, the family cars, and RRSPs and pensions during the marriage. Now we're going to bring the discussion further. We're going to look at what happens to other property and other assets. I know there are different regimes and different rules, and that's why you are with us today, Patricia. Let's start with one of the regimes, which is called partnership of acquests. Can you explain to us the basic rules and what falls under that category, if we can call it that?

**Patricia:** Perfect. So, if you want to compare it to the family patrimony, I think the first thing we have to explain is that the matrimonial regime is based on



the law that is applicable to you at the time of marriage, whereas the family patrimony is where you're habitually residing at the time of separation, divorce, or death. Basically, your matrimonial regime will follow you even if you change jurisdiction. If you were habitually residing in Quebec at the time of your marriage, both parties were residing in Quebec, or if Quebec was your first common domicile after the marriage, the law that applies is Quebec law for your matrimonial regime. If you do not have a marriage contract, the matrimonial regime that applies to you is that of partnership of acquests. This is for everybody who's living in Quebec at the time of marriage and did not go in front of a notary to get a marriage contract. That's the law that applies.

We have to reiterate the fact that all the assets which are part of the family patrimony are partitioned in accordance with the law of the family patrimony that we've already discussed. It's only the other assets, the assets that have not been partitioned in accordance with the family patrimony law, that fall within your matrimonial regime.

**Ruben:** Just so I understand, married couples divorce or separate. First of all, there are all the assets that fall under what we discussed in the first part of this series, basically how those are divided. Now it's as if there are two groups of assets. If we can say it like that, now we're going to discuss what happens with the other assets, and that's what you call the matrimonial regime. That matrimonial regime will decide how things get divided.

**Patricia:** Exactly. So, this regime qualifies each spouse's assets as either acquests or private property. The value of each spouse's acquests can be partitioned at the time of the dissolution of the matrimonial regime, which is again either death, separation as to bed and board, or divorce, whereas the value of the private property will not be partitioned. And something you have to understand is, like the family patrimony during the marriage, the ownership is not affected. You continue to be the owner of your assets. It's just that the other spouse might have the right to a partition in value of that asset. So, the property that is private is not partitionable, and the property which is considered acquests is partitionable. But there is a presumption that assets are acquests, therefore partitionable, therefore can be divided. If a person wants to be able to have an asset be considered private property, they have to make the proof of that.

**Ruben:** Okay, okay. So now let's use examples because I want to be sure I really understand, and for the benefit of the listeners as well. We are under



the first regime when people don't have a marriage contract, which is the partnership of acquests. Under that regime, there's two types of assets: private or what we call acquests. Private assets, acquests assets. The acquests ones can be divided. The private property ones are your property or your assets if we can say as one member of the couple. So, let's start with the ones that can be divided. What falls under acquests? Can you give me some examples? For example, if I have cash at the bank, if I own shares in a company, if I'm working and I use my income to buy some assets, is that private property? And we're talking about assets that don't fall under family patrimony, of course. Is that acquests so it can be divided, or is that private property?

**Patricia:** To determine what is acquests and what is separate as to property, you have to ask yourself when this asset was acquired and how it was acquired. For example, if you work, you have an income regarding your job during the marriage, and that money you put in investment accounts, a bank account, or you buy, let's say, an investment property—so a condo, an apartment, or a house in order to rent it out. If you bought all those things with your work income, that is partitionable in terms of acquests. Those assets are part of the matrimonial regime of acquests. This is not private property. It is acquests, and therefore the other spouse is entitled to half.

**Ruben:** The car, the house, the furniture which is the family patrimony—all the other assets. So money you have in your TFSA, cash at the bank, if you buy investment property—not the family residence which we already covered—any other assets that came from the fruit of your working income, it's part of what we call acquests so it can be divided as well. So it's quite similar to what we have with the family patrimony. Can we say that?

**Patricia:** Yes, it's very similar in the sense that also for acquests, if you receive assets by donation or inheritance, those assets are excluded from the partition of the matrimonial regime a bit like in the family patrimony.

**Ruben:** I see.

**Patricia:** So, also let's say you have investment accounts that are acquests, meaning that you bought them with income you generated from work during the marriage. Also, the dividend and the interest of this investment are also considered acquests.



**Ruben:** Okay, okay. So now we understand that basically all we've been talking about right now in this part of the series and in the first part can be divided. So now, what is private property? What assets and property are not part of what can be divided? If a spouse has that asset, it will stay with that spouse in case of a divorce or separation.

**Patricia:** So, first of all, a bit like in the family patrimony, the property owned or possessed by a spouse before the marriage is private property. And the property that was devolved by succession or donation is excluded also. If the fruits and income—let's say you inherit a bank account and there's \$100,000 in the bank account—if the person, the testator, or the person who gifted you that amount of money, if they say precisely in the donation act or the will that the fruits and income derived from this investment are excluded from acquests, therefore it is excluded also. It becomes private property, but it has to be explicitly mentioned in the will or the donation act.

**Ruben:** Oh, that's very interesting. So, I didn't know that. What you're saying is if my dad in his will is leaving money to me as his son and I'm married, and normally if I received that money, it is private property. Normally, if I invest that money, any interest and dividends would be part of what can be divided unless my dad in his will stipulates specifically that all fruit and income from that money he gives me is private property. Only then will that portion of the investment income not be divided in case of divorce. Is that what we are saying?

**Patricia:** Exactly. So, that's why it's very important that any donation be drafted properly. And, of course, that the will also mentions that.

**Ruben:** Okay. So, I definitely am going to review my will to protect my daughter even more. It's very interesting. Okay, so this is pretty clear on that first matrimonial regime that we call partnership of acquests, which is basically, if I understand right, the default regime in Quebec if you don't have a marriage contract. So, if someone gets married and they didn't draft a marriage contract at the notary, they will fall under that regime where the rules are basically there's two sections. One is acquests which is divisible, and one is private property which, if everything is well-written in legal docs, stays with that person of the couple in case of divorce. Now, there is another regime which is where people decide to write a contract. Can you tell us a bit more about that other regime that's available to anyone that's getting married that would like to draft a marriage contract and what are the implications?



**Patricia:** Okay, so let's say that you're getting married and you do not want to have to partition assets which are not part of the family patrimony. Therefore, it's the right option to get a marriage contract drafted by a notary in Quebec. In this marriage contract, you can provide that you will be married under the matrimonial regime of separate as to property. Basically, what this matrimonial regime means is that there are no more assets that are partitioned other than the assets which are already partitioned in accordance with the family patrimony law. This means that if you have acquired companies during the marriage, if you have investment accounts which are not RRSPs, which are not pensions, those assets cannot be partitioned in the case of the dissolution of marriage. If you have buildings that you bought either to rent out or as investment properties—buildings which are not used for the family usage—those assets are not partitionable either. So basically, at the end of the day, if you're separate as to property, it's only the family patrimony assets which are partitioned, meaning the family residences, the cars, the furniture, the pension plans, the RRSPs. Whatever assets you have, even if you acquired them before or after marriage, stay yours and cannot be divided with the other spouse.

**Ruben:** Yeah, okay. So basically, everyone has the choice to have a contract written where they say that all assets will stay under the person who acquired that asset. So if Mr. acquires some assets, this is his own. If Mrs. acquires some assets, it stays hers. In case of divorce, the only assets that this contract cannot make a decision on are all the assets that fall under the family patrimony. No matter what you write in a contract, your family residences, furniture, and cars and RRSPs during the marriage will have to get divided. But anything else, we can make a choice that we can decide how things get divided or if everyone keeps their own assets based on ownership.

**Patricia:** Yes, absolutely. Because the family patrimony law is of public order, you can't exclude yourself from its application.

**Ruben:** When you live in Quebec.

**Patricia:** Yes, when you live in Quebec, you absolutely have to have a marriage contract that does not contradict the family patrimony law. So you have to make sure that if you address assets that are other than those of the family patrimony, everything else that is not part of the family patrimony is excluded from a division in case of the dissolution of the marriage.



**Ruben:** In your experience, do you see many people writing marriage contracts to access that separation of asset regime, or do most people not know about it, so by default they fall under the partnership of acquests where assets outside the family patrimony can also be divided? What do you see in your experience mostly?

**Patricia:** In Quebec, first of all, many couples don't marry at all. So, they have no matrimonial regime at all, neither separate as to property nor acquests. Of the people who do marry, a lot of them do not have a marriage contract. It's not necessary to have a marriage contract for a lot of people because a lot of people don't have more assets other than those provided by the family patrimony law. A lot of people have their house, their RRSPs, their pension fund, a few pieces of furniture, and a car.

**Ruben:** And for most people, their house is their biggest asset. You're right.

**Patricia:** Exactly. So, there are no assets to speak about. But when a marriage contract can be advisable is, for example, if a person started the marriage with many assets and you want to make sure that there is no risk of certain assets acquired before marriage falling into acquests because there's been commingling and you don't want to have to do the paper trail, or let's say you had a company before marriage and you might buy another company or acquire another company during the marriage and you want to make sure that those companies are excluded from any partition. Those are cases where a matrimonial contract becomes key. Also, when there are second marriages and you want to make sure that certain assets will be provided in the will to your children, you don't necessarily want to partition certain assets with your new spouse. Those are circumstances also where a matrimonial contract is advisable.

**Ruben:** So, you're talking about those situations where a matrimonial contract is advisable. And obviously, it totally makes sense when someone may have more assets than just the house and the RRSP, and those assets were mostly built before marriage. But when we read news about Hollywood stars and very rich people, we often hear this expression "prenup." Is that what we are talking about when we are saying marriage contract, matrimonial contract? Are we talking about a prenup agreement?

**Patricia:** It can be similar to a prenup, but it's not exactly a prenup in the sense that a marriage contract in Quebec, in particular, has very clear limitations. For





example, in an American prenup, you can provide for a limitation of spousal support. Let's say that you will be entitled to a maximum of \$2 million in case of a divorce, regardless of the value of my assets, regardless of the lifestyle we had, and then you're stuck with this \$2 million if the prenup is considered valid. Whereas in Quebec, for example, you cannot limit elementary needs. You cannot say if we divorce, I'll give you \$2 million and not a penny more, even if we had a lifestyle of \$20 million a year. The right to request elementary support is of public order, and let's say you had a lifestyle of \$20 million a year, you cannot be limited to a certain amount provided by a marriage contract in Quebec. So, that would be illegal, and the whole marriage contract would be null and void.

**Ruben:** Okay, so there are specific rules. You cannot do whatever you want. There are specific rules depending on the various areas that the law covers. So that's very interesting, Patricia. Thanks again for sharing your knowledge. And I have one last question before we end this part of the series. In your experience, when you look at marriage contracts and people entering into a marriage and having that discussion with someone like you with your expertise, how do those discussions go? Do you see people saying, for example, let's not cover that because it's not romantic talking about assets as we are entering a marriage? How do people manage the emotional side of that? Because I know that at the end, when people get divorced, sometimes that's when they regret not putting something like that in place. But even before, when things are going well, how do those discussions go? I'm just curious.

**Patricia:** Yes, it's not always easy. You have to make sure that both spouses understand why it's important to have a marriage contract, if such is the case, and make sure also it's a win-win in this marriage contract, that any legitimate needs are met. So, you could provide for the other spouse a very reasonable, let's say, compensation if they agree, let's say, to be separate as to property. Make sure that certain assets will be put into their name so that the other spouse will be entitled to a set amount of money in accordance with the number of years that they stay together. I think it's all about communication. And we're there as lawyers to make sure that we accompany them in their reflection. And also, in Quebec, it's an easier process because there are laws of public order that will protect the spouse. There is a family patrimony. There is the spousal support. There is a lot of money that can be obtained in that regard. Let's say that the wife says the family patrimony is not that much. She



had the house before marriage. Often what we can say is that is true, but if you get divorced, you could be entitled to a lump sum payment that is sufficient for you to buy a house of similar value to the one you lived in during the marriage if your husband or wife has the means to provide you that. So, in Quebec, it's a less dangerous endeavor to draft marriage contracts because we know there's real protection for the spouses. And I think that makes the whole process much easier.

**Ruben:** You mentioned something very key. You said that at the end, it's all about communication as well. And I'm sure that communication is easier when people are in love and things are going well compared to when people are fighting and not in love anymore. So, in a sense, it's better to discuss those important matters when things are going well instead of waiting when we hate each other and are trying to negotiate. Is that fair?

**Patricia:** Yes. That's what we tell our clients, that it may be an uncomfortable discussion, but imagine having to have this discussion after you've had a very difficult, rough marriage, or there's been adultery or whatnot. Certainly not the kind of discussion that will be easier at that point in time. So, it's better to face reality. When you're getting married, you have to have a discussion about your values, your risk factors, and how far you're ready to go in terms of protecting the other spouse financially. Those are tough discussions that are better to have when people are in love and there's still trust. And I think people understand that, and generally, those negotiations are done in a very respectful way.

**Ruben:** Very interesting.

**Patricia:** And also, you get to learn a bit about the other spouse.

**Ruben:** Exactly.

**Patricia:** The cards are on the table as well, where you can see everything before you enter officially in a marriage.

**Ruben:** That's a very good point.

**Patricia:** Somebody told me something that I thought was really smart. He says you only know who you married when you divorce.

**Ruben:** Yeah, and you would have wished to know that person before.





**Patricia:** Exactly, because then you realize who's generous, who is kind, who is compassionate, who is, on the contrary, vindictive. So, if you have the question before marriage, you're able to have a sense of who you're marrying and what their values are, how they approach issues of money, if they're generous and kind or rigid. It clearly provides an insight, and it's always better to get into a marriage with your eyes open and having legitimate expectations that are understood by the other party.

**Ruben:** Yeah, it's a very good point. It's not exactly the same thing, but I can make a comparison with when we talk about finances. When we tell people that as a couple, married or not, it's important to understand once you're entering a serious relationship what the financial situation of the other person is. Because if you realize afterwards, after years, that person had a lot of debt and that person is a spender, and if you're different and you would like to build some asset base, sometimes it's better to know in advance, at least knowing what you're getting into. Sometimes money is really taboo, people tend not to talk about that, but it's important to eventually, when there's some level of comfort, that both members of a couple open up and discuss finances, especially when they start sharing space to live and expenses, and when they have kids. Very important. So, I can see what you mean when you said it's important to not only discuss finances but other important matters of life when you are entering a serious relationship.

**Patricia:** Absolutely. Sometimes people get married or get into a de facto couple situation and haven't discussed how many kids they want, what school the children will go to—English or French speaking, public or private. It's good to have those discussions before getting into, like you say, a serious relationship. Absolutely.

**Ruben:** Yeah, exactly. Thanks a lot, Patricia, again, for sharing your amazing knowledge and expertise with me and with our listeners. We spoke a lot about married couples in Quebec in the first two series that we did, and we covered the family patrimony and the matrimonial regime. But as we know, in Quebec, many couples are not married. So, in the next part of this series, we'll cover what are the main differences and the different considerations for unmarried couples. So, thanks again, Patricia, and see you all in the next part of the series.

**Patricia:** Thank you, Ruben.



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