



## Wealth & Family Law: Part 3 - Unmarried Couples in Québec

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**Keith:** Welcome to the Empowered Investor. My name is Keith Matthews. And in today's show, we're covering the last section of family law for those living in the province of Quebec. So, part three is entitled Unmarried Couples. The division of assets or the separation of assets. Shortly, we'll also be coming out with a series for all listeners under common law, same topic, division of assets, separation of assets. So, in today's show, we have returning as our guest Patricia Foucault, who's done a fabulous job helping our listeners with this complex subject matter. And, of course, my trusted co-host Ruben Antoine, who will be interviewing Patricia for this subject matter. Thank you and have a wonderful day.

**Ruben:** Welcome to the Empowered Investor Podcast. This is the third part of the series that we are doing on family law. We have Patricia with us again.

**Patricia:** Hi, Ruben.

**Ruben:** Hi, Patricia. So, in the first part and the second part of this series, we covered how assets are divided under the law in Quebec for married couples. But we thought it was very important to also cover what happens to couples that are not married, especially in Quebec. I was looking at the stats, and as per Statistics Canada, Quebec is the province where there is the highest percentage—approximately 40%—of couples who are not married. So, it's the highest percentage in Canada. And we're also one of the leaders in the world, actually. So, this subject is really important because a lot of couples will relate, and it's an important one. So, I'm going to dive in right away. Patricia, if you can please explain to us the main differences between married couples and



what we discussed in the first two portions of this series and what we call common-law spouses.

**Patricia:** Ruben, thank you so much. I do believe it's a very important issue to address, especially in Quebec, as you said. And I do appreciate the fact that you're using terms that your listeners can understand, but as a lawyer, I have to tell you that common law is a mislabel. There are no common-law spouses in Quebec, but what you call common-law spouses—meaning a couple that lives, in French we say *maritalement*, as if they were married—we call that *de facto* spouses in Quebec.

**Ruben:** Oh, that's the right legal term.

**Patricia:** Yes, we call it a *de facto* spouse because when you use a term...

**Ruben:** That's why I have you on the podcast, Patricia. You need to educate me so that I can use the right terms as well. Thanks for that.

**Patricia:** Oh, perfect. So, we don't use common-law spouses because common law means that the law will apply to those spouses, the common law, which is basically the law that you find in most Anglophone provinces in Canada that they will apply the common law to the *de facto* spouses. But us in Quebec, *de facto* spouses do not have the same rights as married couples, and many other jurisdictions in Canada, common-law spouses—basically spouses who are not married—are awarded the same rights as married couples.

**Ruben:** In many other provinces in Canada, they have the same rights as married couples, but in Quebec, there's a different situation.

**Patricia:** Yes. In Quebec, there are almost no protections, no laws that apply to *de facto* spouses. And actually, you don't even find—you find very little reference to *de facto* spouses in the Quebec Civil Code. So, one of the only rights we'll find is the right to maintain occupancy in a dwelling where the other spouse was the lessee in terms of separation. For example, you're a *de facto* spouse and you rent an apartment, and let's say the mother and the children live in this apartment and the husband basically leaves them or they are separated. The mother could ask to basically have the right to be the lessee in the premises regardless of the fact that the father is the only person who signed the lease. So, basically, that's about it in terms of protection.



**Ruben:** So, when you say that's about it, in the first two portions of the series, we said that when a couple is married, there's a patrimony law that can protect one member of the couple where house, cars, and furniture and even RRSPs and pension during the marriage can be divided. And even other assets that I didn't name can be divided as well under other regimes basically. But that's for married couples. When a couple is not married—so it's de facto spouses—if they get separated and assets were built, and it was a long relationship like 15, 20 years, assets were built during that relationship. Basically, they get separated, and if an asset was under the name of one spouse, there's no separation at all. There's no divide. Everyone takes their own assets, and they leave with it, basically. That's what we are saying.

**Patricia:** That's what the Quebec Civil Code says. The Quebec Civil Code, when it talks about the family patrimony, when it uses the word "spouses," when it talks about matrimony regime, they only are talking about married couples. If you're just living with a person, if you have 10 kids with that person but you're not married, you do not have the protection of the family patrimony. You do not have the protection of the regime of acquests regarding any other assets that you may have. You're not even entitled to spousal support for yourself. Even if you were a stay-at-home mom or father for 20 years, you had 10 kids, you are not awarded any of those specific protections that apply only to married couples.

**Ruben:** You just mentioned support, and I kept referring to assets, but like you just said, support payment as well—alimony that a married couple will get someone in the couple will get depending on the situation. For example, if one member was staying at home and taking care of the family. In the case of de facto spouses, no support, no alimony, no payment coming from the other member of the couple. What happens if there is a kid though? Does that change the situation?

**Patricia:** If there are children, you're entitled to child support.

**Ruben:** Not spousal support, but child support.

**Patricia:** Not spousal support and child support, which is easily calculated in Quebec with a very specific formula. But that's just enough for the very basic needs of the children. That is definitely not enough to be able to continue to maintain the same lifestyle that you had during the de facto relationship. If, for example, you're a stay-at-home spouse and you haven't worked for a long time



and your other spouse is well off, has a very substantive income. So there's clearly an imbalance in treatment between couples which are married versus couples who are not married. And what basically the Quebec legislator responds to the fact when you say there's an imbalance, it's an injustice. They say we respect the right of spouses not to get married. It's a contractual liberty to decide if certain laws will apply to you or not. So you have the right not to get married. You have the right not to want any protection from the law.

**Ruben:** So in other words, they are saying it's your choice. You decided to get married or not, so the consequences came with your own choice. That's what they are saying, basically. You have the choice to choose one or the other.

**Patricia:** That's exactly what they're saying. But in the—I don't know if you've heard of the Lola case—and basically one of the arguments that was put forth in front of the Supreme Court is to say that it's not necessarily a choice of both parties not to get married. If you have a person who is extremely wealthy and has total control of the assets, they basically have a veto. And they can decide that no, we're not getting married. And so what happens? Let's say you're in a relationship with a person, you get pregnant, you want to get married. The other spouse who is very wealthy does not want to get married. Well, you're going to leave the spouse because he doesn't want to marry you? You're going to necessarily want to raise your child alone or in a family that's broken up just because he doesn't want to marry you? Is that really true liberty? Is that a true expression of your will? Not necessarily. And that was brought forth as the Supreme Court. But the Supreme Court says we don't have proof enough in terms of—

**Ruben:** What were the discussions?

**Patricia:** —exactly in terms of where—so we don't have studies in terms of sociology that explain all of that to us. We cannot presume that those decisions were not made out of free will. So that argument was not retained because in this case, in the Lola case, the attorneys for Lola were basically arguing to the Supreme Court that it's anti-constitutional not to provide equal rights. So the same rights for de facto spouses as those which are acquired or awarded to married couples. They were saying basically there was discrimination on the basis of your social status.

**Ruben:** So what was the result of that Eric versus Lola case?



**Patricia:** So what's very interesting is that the first judge who heard the case, the judge of the Superior Court, came to the conclusion that it was not anti-constitutional not to provide rights for de facto spouses. But the Court of Appeal of Quebec, which is the highest level court in Quebec, did come to the conclusion that it was anti-constitutional and that the Quebec Civil Code needed to provide rights for de facto spouses. But then the case went to the Supreme Court, which is the highest court in Canada, and the Supreme Court, in a very tight decision, 5-4, came to the conclusion that it was not anti-constitutional not to provide rights to de facto spouses in Quebec, be it spousal support, be it partition of assets. But what is really interesting, Ruben, is that after this decision from the Supreme Court, we started to get some jurisprudence coming out of the Quebec Court of Appeal but also the Quebec Superior Court, which basically opened up the possibility of certain rights for de facto spouses. And then I'm referring to a theory that exists in the code, which is unjust enrichment. So unjust enrichment is to say that a person enriched another person, and basically that enrichment was not justifiable, and that they need compensation for all the work they gave to the other person that permitted that person to be more rich. So basically, you have to prove six things in order to prove unjust enrichment. You have to prove that the other person was enriched, that they got richer. You have to prove that you yourself were impoverished by your contribution, and there has to be a correlation between that person's enrichment and your impoverishment, and there has to be a lack of justification, and also there has to be an absence of any other remedy.

**Ruben:** So I know we cannot say this is the situation, but if we're just having a discussion so that I understand, this can be a case where a stay-at-home mom is taking care of—I'm just using an example again—is taking care of the whole family, managing the whole home. And let's say there are four kids. And because of all what is required to take care of the kids and their activities and everything, the whole home, that person cannot work. And at the same time, the husband—and I'm using a mom and a dad, but it can be the other way around—but the husband is working and, if we can say, getting rich and improving his financial situation. And he's able to do that and focus on work because the mom is doing it. But at the same time, after many years, you can see a situation where there is a correlation between those two situations. Can we take this one as an example or not really?



**Patricia:** Let's start by the historical—how this unjust enrichment was utilized historically. So historically, for example, when I was studying in university more than 20 years ago, unjust enrichment was just for the most extreme cases.

**Ruben:** Okay. Yes, to be more extreme than the example that I just gave.

**Patricia:** At that time, at that point in time, 20 years ago, the example that they would give us in law school was an extreme one. For example, you have a farmer. He has a farm. He's the sole owner of the farm, and they have 10 children. And the wife, she wakes up at 5 a.m. every morning. She takes care of the children. She sews their clothes herself. She works on the farm without any pay.

**Ruben:** So she's not only taking care of the family. She's even working. And in my example, I used four kids, you are going to 10 kids. So I didn't use it.

**Patricia:** At that point in time, it had to be an extreme case because it had to be a contribution that goes above and beyond anything that most women do. And already most women do a lot. So if you have to go above and beyond what most women did, it had to be extraordinary contributions. And even in those cases, they did not get necessarily huge amounts. But in view of the evolution of society, people having a sense of what is right and wrong, and maybe an unjust situation for certain people who've been in very long-term de facto relationships, had children, committed themselves either to working in the public sector or for a person's business without pay or very little pay, or taking care of the children—it could be only two children now—while the other person is basically developing a career or business, getting rich, and the other person either stopped working altogether or worked part-time only, or refused advancements in career to be able to be more available for the children to take care of this family. Now there is a clear opening of the Court of Appeal to basically provide those spouses a compensation for the years that they spent taking care of the children, taking care of the house. And the amount that we see often coming very recently in the jurisprudence is 20%.

**Ruben:** 20% of what?

**Patricia:** Of the assets accumulated by the other spouse during the marriage.

**Ruben:** So right now, in Quebec, for couples that are not married that we said earlier that they don't have any rights in case of separation to claim some of





the assets that were built during the relationship, right now there's an opening where unmarried couples can have approximately 20% if they can prove that unjust enrichment.

**Patricia:** Thank you. Thank you. So they have some rights to get some of the assets. Is that what we are saying?

**Patricia:** There is a possibility. Again, what I said is that the Quebec Civil Code does not provide for the right of partition of assets. They don't say you're entitled to half of this, not even 20% of that. The Quebec Civil Code does not provide.

**Ruben:** It's just a jurisprudence.

**Patricia:** It's not written law. It's jurisprudence that's provided us with this opening, and this 20% is not a set number. Some judges say it could go up to 30-35%. But we see that this 20% is coming out of the jurisprudence, but it's not a given. The other spouse can say, "Look, no. Even if I worked maybe longer hours, I still worked as much as you regarding the children. None of what I accomplished is thanks to you or I was already accomplished or I already had my business when we met." So it's not automatic. It's not because necessarily you're a stay-at-home mom, you will be automatically entitled to 20%. There is an opening to permit such requests in terms of an unjust enrichment, but you still have to be able to show that.

**Ruben:** Support it. Yes, to support your claim.

**Patricia:** Absolutely.

**Ruben:** So what you are mentioning is getting a percentage of the assets, but is there any evolution on the support payment for unmarried couples as well or this one is still the way it is as per the law?

**Patricia:** There is no right to spousal support for de facto spouses. So, for example, if you had a situation where there were not a lot of assets but there was a nice income coming in year after year, and the other spouse could continue having a great income for many years after the separation, there is no right to any spousal support for a de facto spouse, only child support if the couple has children. So there's still a lot of reflection to be had. There's still a lot of progress. And also, the Quebec legislator has been promising to address this issue for many years, and I think it's a tricky situation, but I think it's



important that clarity be given because, like you said, for now, unjust enrichment is a case-by-case. There can be many defenses brought up against that procedure for unjust enrichment. And you don't want people to be stuck in front of judges for years to try to get something that is as simple as, let's say, saying 20% for all de facto spouses or whatnot, or another type of calculation, or the right to spousal support that could bring clarity to de facto spouses and make sure that they are protected regardless of the fact that they're not married. And also, importantly, to not necessarily have to go to court to obtain what is considered fair in terms of compensation for years spent taking care of children and/or household.

**Ruben:** Yeah, definitely. Being in the financial advisory world, what we see sometimes is that when members of an unmarried relationship have pension plans from their employer or from—when you think about the QPP, the Régie des rentes du Québec, it seems that pension plans—I'm not talking about RRSPs, I'm talking about actual pension plans—sometimes they fall under different legislation where de facto spouses might have a claim. Is that right?

**Patricia:** Yes. Let's say you have a pension fund with your employer and you are deceased. Your surviving spouse, even if it's a de facto spouse and not a married spouse, will be entitled to half of your pension plan. However, if it's a separation, then that other spouse is not entitled to half of your pension plan.

**Ruben:** Ah, okay. Yes. In the event of a death, there are some rights, if we can say, even if you're not married.

**Patricia:** Exactly. And also, it's clear that de facto spouses have the right to prepare a contract. They can have a domestic contract drafted.

**Ruben:** Oh, okay.

**Patricia:** A domestic contract is basically a contract that de facto spouses sign together. And they can say, "We're not married couples, but we want to provide for one another, for one of the spouses certain rights. We might want to be able to partition certain assets if we get separated. We might want to be able to provide for spousal support for the other de facto spouse if we separate." So clearly, there is another option. Let's say that you absolutely don't want to get married because you don't believe in the institution or whatnot, or you'd rather have a very clear set of rules that would apply in terms of separation. Then the right course of action is to sign a domestic





contract. Basically, you can create your own law, the law that will apply to your own separation, and you can decide what assets will be partitioned, what will not be partitioned, if there are going to be spousal support rights or not. So that's something that we encourage until we have more clarity in terms of the law. But again, if you're the most disadvantaged spouse, it's very difficult to encourage or negotiate or force the other person to the negotiating table. So it's not necessarily a realistic solution for the whole province, but it can be a good solution for individual cases.

**Ruben:** In some cases, that can be better than nothing, and it's a protection that is available. And I'm assuming this will be done in front of a lawyer and/or notary so that you have to respect that contract once it's signed if there's a separation. I'm assuming, is that right?

**Patricia:** Legally, contrary to the marriage contract which has to be signed in front of a notary, a domestic contract doesn't need to be signed in front of a notary. It's better to have either a notary or lawyer help draft it to make sure that the language is clear, that the intention is clear. But at the end of the day, it's just a contract between two adults, so people could draft it and sign it. But we definitely never recommend people to draft such an important contract without getting at least some legal advice.

**Ruben:** Yeah, very good point. Wow. Thanks a lot, Patricia, for all this amazing knowledge and for all your expertise. As a recap, we have learned—myself and the listeners—the different rules for married couples, what falls under the family patrimony which we cannot get out of, and what falls under the different regimes, which in some cases, we can have a marriage contract to decide what can be divided or not. And very important as well, what are the rules for couples that are married? So I think it's all very current, relevant information. Thanks for sharing that with us. So is there any last key takeaway or anything you want to share, Patricia, before we leave the podcast?

**Patricia:** If there's one takeaway, I think from all this podcast is knowledge is key. Knowledge of yourself, knowledge of your own assets, of your spouse's assets, of your values, of the law is very important because once you know what the law is, when you know what your rights are, you can make informed decisions. So you're not blindsided.

**Ruben:** Very good point. Everyone can be guided by professionals, and people should not hesitate to contact an expert professional. So this was the episode



of the Empowered Investor on family law. I hope you guys enjoy it, and we'll see you in the next episode. Bye, Patricia. Bye, everyone.

**Patricia:** Hi, Ruben. Thank you so much.

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