



**WASTING OF PROPERTY:
CONSEQUENCES DURING THE PARTITION
OF THE FAMILY PATRIMONY**

You have been married to Pierre for 20 years. You left him due to his gambling problem. He admitted to you that he was going to the Montreal Casino on a daily basis. Two months before your separation, you noticed that Pierre had withdrawn everything from his RRSP, an amount of \$20,000. As for you, you accumulated \$15,000 in your RRSP while the two of you lived together. You wonder whether you will have to share this amount with Pierre.

The purpose of the family patrimony is to create an economic union between the spouses. The spouses contribute money, property or services to the patrimony. As a general rule, in a divorce or separation from bed and board, the value of the family patrimony is partitioned equally between the spouses. Exceptionally, the value of the patrimony can be split unequally, in particular, by not partitioning an asset such as an RRSP. One of the reasons justifying an unequal partition is the irresponsible conduct of one of the spouses, such as the conduct of Pierre who chose to squander his money at the casino. It must be proved that, through his conduct, Pierre violated his obligation to contribute to the creation or preservation of the family patrimony and that an injustice would result from its equal partition.

Moreover, the provisions of the *Civil Code of Québec* provide that when one spouse has “alienated or misappropriated”—that is, sold, given or disposed of—property in the family patrimony during the year preceding the application for divorce or separation from bed and board, the other spouse can ask the court for a compensatory payment. If more than one year has elapsed since the property was alienated, the other spouse can still apply for a compensatory payment, but he will have to prove that the alienation was done for the purpose of reducing his share.

Consequently, you can ask the court for a compensatory payment, given that Pierre deprived you of the partition of his RRSP. You can also ask for an unequal partition of the value of the family patrimony because of Pierre’s irresponsible conduct, given that he squandered his RRSP to gamble at the casino rather than contributing to the growth of the family patrimony.

If you satisfy your burden of proof, the court could conclude that you are entitled to keep your entire RRSP.

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.