



**THE ANALOGOUS TREATMENT OF A PREDATORY  
MARRIAGE IN A CIVIL LAW JURISDICTION UNDER THE  
QUEBEC CIVIL CODE**

**STEP ITALY MENTAL CAPACITY SIG**  
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By way of introductory comment, the federal and provincial governments share constitutional power with respect to marriage (and divorce). The federal government has broad legislative responsibility for divorce and for aspects of capacity to marry or who can legally marry whom. The provinces are responsible for laws about the solemnization of marriage.

In Quebec, a couple (whether heterosexual or homosexual) may choose to live together in a *de facto* union, marry or enter into a civil union. *De facto* couples do not have the same rights and responsibilities under family, property or succession law, as do married or civil union couples, however long they cohabit. The rights and obligations that are a consequence of marriage and civil union are the same. The differences between the two are with respect to the required age and the dissolution process. It should, however, be noted that the incidence of civil unions (introduced in 2002) in Quebec has never been widespread and are rare ever since the introduction of legislation in 2005 allowing same-sex marriages.

The *Civil Code of Quebec* (the “**CCQ**”) sets out the legal requirements for marriage. It contains provisions for religious and civil marriage ceremonies, the required witnesses to a marriage ceremony, the officiants authorized to solemnize a marriage and the minimum age requirements.

The federal legislation prohibits marriage between persons related lineally by consanguinity or adoption and between siblings whether by whole-blood or half-blood or by adoption. These prohibited relationships apply in Quebec.

In order to marry, the spouses must be at least 18 years old; however, a person may apply to the courts for authorization to marry at the age of 16 or 17. To marry, a person must not be already married or in a civil union and proof of civil status must be provided to the officiant.

It should be noted, even if obvious, that physical presence of the intended spouses is required at the marriage ceremony. Proxy marriages are prohibited in Quebec. The identity of the spouses is verified by the officiant. At the ceremony each spouse must consent to the marriage when asked by the officiant and also sign the declaration of marriage.

Finally, to marry, a person must be able to give free and enlightened consent. This means a person must agree to the marriage without being forced to marry by constraints or threats and with a full understanding of the effects of the commitment. If this condition of consent is not met, any interested person may oppose the marriage or request its annulment.

The requirements for a civil union are summarized in a few succinct articles. Pursuant to Article 521.1 CCQ, the requirements for a civil union in Quebec state that a person must not be: under the age of 18; already married; and incapable of giving consent; or marrying a family member such as a sibling or parent.

The CCQ fails to address in a direct or complete manner an individual's requisite capacity to marry, or any other aspects that may play a significant role in remedying the wrong of a predatory marriage, including as a consequence of undue influence, and/or duress.

Articles 372 and 380 to 390 CCQ are useful tools in combatting predatory marriages. Article 372 CCQ is a remedy to oppose a marriage prior to its solemnization if consent is vitiated while Article 390 CCQ is an opposition remedy after the marriage has been concluded if the formalistic requirements were not met:

**372.** Any interested person may oppose the solemnization of a marriage between persons incapable of contracting it, in particular if, in the person's opinion, the consent of one of the intended spouses is likely not to be free or enlightened.

A minor may oppose a marriage alone. He may also act alone as defendant.

**380.** A marriage which is not solemnized as prescribed by this Title and the necessary conditions for its formation may be declared null upon the application of any interested person, although the court may decide according to the circumstances.

No action lies after the lapse of three years from the solemnization, except where public order is concerned, in particular if the consent of one of the spouses was not free or enlightened.

Both articles were considered in *ACB v. Y. (J.) G.*, 2004<sup>1</sup>. This decision is relevant for two considerations: 1) the status of "an interested person" to oppose a marriage; and 2) the distinction between a marriage that is absolutely null and one that is relatively null.

In summary, the decision dealt with Mr. G who was 80 years old at the time he married his spouse, Ms. L.. Prior to the marriage, Mr. B, filed a petition to oppose the marriage on the basis that Mr. G was incapable of consenting to the union. Despite this application, Mr. G married Ms. L. In turn, Mr. B. filed a motion to nullify the marriage under Article 380

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<sup>1</sup> 2004 CanLII 7327 (QC CS).

CCQ. The court dismissed this motion on the basis that Mr. B failed to meet the requirements necessary to be an interested person. The following requirements were outlined by the court:

[20] In this case, Mr. B... has neither a pecuniary interest nor a direct moral interest. He is not an heir nor a child of Mr. G... and the two daughters are not requesting the annulment of their father's marriage. The Court concludes that Mr. B... is not an interested person to request the annulment of the marriage between Mr. G... and Mrs. L....<sup>2</sup>

The decision also distinguished an absolutely null marriage from a relatively null marriage based on the general contractual principles of absolute nullity and that of relative nullity pursuant to Articles 1417 and 1419 CCQ respectively. Pursuant to Article 1417 CCQ, a contract is absolutely null where the condition of formation sanctioned by its nullity is necessary for the protection of the general interest. Pursuant to 1419 CCQ, a contract is relatively null where the condition of formation sanctioned by its nullity is necessary for the protection of an individual interest, such as where the consent of the parties or of one of them is vitiated.

Extrapolating from these principles, the court concluded that a marriage contracted by a person incapable of giving valid consent is absolutely null. Furthermore, absolute nullity may only be invoked before the court by a person who has a pecuniary interest except if the action is brought by the alleged spouses or the fathers or mothers, in which case, a purely moral interest suffices. On the other hand, relative nullity of a marriage may only be invoked by one of the spouses, as for example, if consent to the marriage was not freely provided.

Similarly, Article 521.4 CCQ provides for opposition to a civil union where capacity is in question. It states the following:

**521.4.** Any interested person may oppose a civil union between persons incapable of contracting a civil union, in particular if, in the person's opinion, the consent of one of the intended spouses is likely not to be free or enlightened.

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<sup>2</sup> *Ibid.* at para. 28.

Despite its potential utility, there are no published decisions applying Article 521.4 CCQ and this is probably due to the fact that there are few civil unions in Quebec, as noted above.

An interested person who wishes to oppose the solemnization of a marriage or civil union must file an opposition with the Superior Court<sup>3</sup>. The person must notify, at least five (5) days prior to submitting the opposition, the “intended spouse, the officiant, the registrar of civil status and, if either intended spouse is a minor, that spouse’s parents or tutor”.<sup>4</sup>

Articles 382 to 387 CCQ address certain effects of the nullity of the marriage, distinguishing the consequences based on good faith and bad faith. These articles may prove to be useful in the context of a predatory marriage.

Article 386 CCQ renders null any gifts transferred *inter vivos*, or *mortis causa* made in consideration of the marriage to a spouse in bad faith. In the circumstances of a predatory marriage, individuals may potentially seek relief pursuant to such article. If a predatory spouse enters a marriage with a vulnerable individual in an effort to obtain profit, the vulnerable party may invoke Article 386 CCQ to have his or her property or assets returned to him or her. Also, Articles 380 CCQ to 390 CCQ provide notable and relevant safeguards that may prevent a predatory spouse from obtaining assets of a vulnerable or incapable individual who falls prey to such a marriage. These include the following provisions:

**389.** Nullity of marriage extinguishes the right which the spouses had to claim support unless, on a demand, the court, in declaring nullity, orders one of them to pay support to the other or, being unable, owing to the circumstances, to decide the question equitably, reserves the right to claim support.

**382.** A marriage that has been declared null produces its effects in favor of spouses who were in good faith.

In particular, the liquidation of the patrimonial rights that are then presumed to have existed is proceeded with, unless the spouses each agree to take back their property.

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<sup>3</sup> Quebec, Opposition to The Solemnization of a Marriage, at: <https://www.quebec.ca/en/famille-et-soutien-aux-personnes/couple-famille/mariage-union-civile-ou-union-de-fait/mariage/opposition>.

<sup>4</sup> Art. 458 *Code of Civil Procedure*.

The appeal decision of *Collin-Evanoff v. Cadieux*,<sup>5</sup> (“**Collin**”) involved a vulnerable elderly individual, a caretaker and a predatory marriage. However, the court in *Collin* did not ultimately address the requisite capacity to marry, but rather, addressed decisional capacity regarding gift transfers during a marriage.

Rosario had executed a will in 1970 when he was 64, leaving all his property to his siblings. In 1982, three weeks after leaving the hospital, he executed a new will that left all his assets to his caretaker, the Appellant. Two weeks after that, he sold his family home at a value much lower than market value to the Appellant. This sale occurred despite the offer from Rosario’s nephew to buy the home a few weeks prior at a price over market value. In March, Rosario married the Appellant without informing his family. Two months later, on May 30<sup>th</sup>, Rosario died.

The Respondents, Rosario’s siblings, “took action to set aside the new will in favour of the Appellant as well as the marriage contract gift in her favour” on the grounds of mental incapacity and undue influence<sup>6</sup>. The Court agreed with the Appellants, stating that Rosario did not “possess the mental and intellectual faculties” to make such decisions.<sup>7</sup>

The Court stated the following regarding Rosario’s decisional capacity;

“Given the testator's age, the seriousness of his illness, his weak condition, the fact that he had always been on good terms with his brothers and sisters and the unusual circumstances surrounding the events that occurred following the testator's release from hospital, I can see no error in [ the trial judge's] conclusion.”<sup>8</sup>

Capacity and the ability to dispose by will of one’s property are discussed, specifically under Articles 703 and 707 CCQ. They state the following:

**703.** Every person having the required capacity may, by will, provide otherwise than as by law for the devolution upon his death of the whole or part of his property.

**707.** The capacity of the testator is considered relatively to the time he made his will.

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<sup>5</sup> 1988 CanLII 524 (QC CA).

<sup>6</sup> *Ibid.* at page 2.

<sup>7</sup> *Ibid.* at page 2.

<sup>8</sup> *Ibid.* at page 4.

These articles do not directly address predatory marriages, nor the requisite capacity to marry, but rather address testamentary capacity. Testamentary capacity considerations can often be analysed in the context of predatory marriages because a vulnerable adult may execute a new will under pressure from a predatory spouse. A will in Quebec is not revoked by marriage. Additionally, a vulnerable adult may be unaware or unable to make a new Will, and die intestate, leaving the predator spouse to inherit under the CCQ rules of legal devolution of successions. Article 666 CCQ states that the surviving spouse is entitled to one-third of the deceased's estate if the deceased dies leaving descendants. This demonstrates the unfortunate consequences that a predatory spouse may have on the estate of a vulnerable individual.

The decision of *Succession de Moore*<sup>9</sup> ("**Moore**") is another illustration of the treatment accorded by the Quebec Superior Court to testamentary capacity and the ability to bequeath one's property when capacity is at issue. In *Moore*, the Court ruled that the will of the Deceased was invalid.<sup>10</sup> The court made a finding of incapacity of the Deceased at the time of execution of the will on December 19, 2015. The Decision involves a "shot gun will", executed under pressure, time constraints and demands from a family member, which are similar themes often present in a predatory marriage.<sup>11</sup>

Importantly, and most applicable to the issue at hand, the court asserted "that the ability to carry out a normal conversation and think rationally tends not to be determinative of testamentary capacity".<sup>12</sup> The Deceased had exhibited signs of cognitive decline as noted from testimonies from his employees and children.

The Defendant's expert, Dr. Frank, stated that the Deceased had not exhibited signs of cognitive impairment.<sup>13</sup> After signing the will, the Deceased had continued to work for the company, including attending meetings and dealing with financial matters.<sup>14</sup>

The Plaintiff's expert, Dr. Shulman, noted that the application of the capacity assessment was incorrect since Dr. Frank relied on opinions that pointed to the Deceased's general capacity, rather than his capacity to execute a will. Dr. Shulman opined:

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<sup>9</sup> 2024 QCCS 1538.

<sup>10</sup> *Ibid.* at para 7.

<sup>11</sup> *Ibid.* at para 7.

<sup>12</sup> *Ibid.* at para 28.

<sup>13</sup> *Ibid.* at para 93.

<sup>14</sup> *Ibid.* at para 93.

The preservation of social graces can mask cognitive impairment and that a general assessment of global capacity bears very little value in this instance.<sup>15</sup>

Capacity is an extremely important factor in the context of predatory marriages. Dr. Shulman's opinion regarding capacity in *Moore* emphasized the need for a more nuanced approach in assessing capacity:

Mental capacities are both task specific and situation specific, and one cannot generalize or draw conclusions about capacity without probing the specific criteria and circumstances for each capacity.<sup>16</sup>

In the context of predatory marriages, the courts in Quebec have focused on the capacity to make a will or gifts, undue influence, unworthiness to inherit and elder abuse.

The decisions rendered in recent years have rightfully sought to redress the damages caused by a predatory marriage but without directly confronting the root cause of the damages which is precisely the predatory marriage that has resulted in defective wills, gifts and financial abuse.

Despite the troubling increase in predatory marriages, the CCQ does not provide direct relief based on incapacity to marry.

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<sup>15</sup> *Ibid.* at para 85.

<sup>16</sup> *Ibid.* at para 84.