



Case in Brief: **Yared v. Karam**

Judgment of December 12, 2019 | On appeal from the Court of Appeal of Quebec  
Neutral citation: 2019 SCC 62

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***Quebec family property rules apply to a family home held by a trust that one of the spouses controls, the Supreme Court has ruled.***

When people get married in Quebec, a “family patrimony” is created. It usually includes property such as family homes, cars, and furniture. These can be owned by both spouses, or by just one spouse. It can also include a family home that a spouse doesn’t own, but has rights to use. Under Quebec’s *Civil Code*, “rights which confer use” are included in the family patrimony. If the marriage ends, family patrimony almost always gets divided equally between the spouses.

Mr. Karam and Ms. Yared got married in 1998. They had four children together. In 2011, Ms. Yared was diagnosed with incurable cancer. Mr. Karam decided to set up a trust for the benefit of the children.

In Quebec law, a trust is a patrimony without an owner. It doesn’t belong to anyone. A trust can have settlors, trustees, and beneficiaries who create, control, and benefit from it. But the property in the trust never becomes part of anyone’s personal patrimony. When Mr. Karam set up the trust, he didn’t do it to avoid any rules of family patrimony. He just wanted to protect the family assets.

In 2012, the spouses put money in the trust to buy a home in Montreal. The home was worth over \$2 million. Mr. Karam said he wanted to buy a house that could be both the family home and an investment that would benefit the children.

In 2014, Ms. Yared left the family home and filed for divorce. She made a will and divided her estate into four trusts, one for each of the children. She died in 2015, before the divorce was finalized.

Ms. Yared’s brothers were the liquidators (executors) of her estate. In 2016, they asked a court to include the value of the home held by the trust in the family patrimony. If either spouse had owned the home, it would have been part of the family patrimony. But Mr. Karam said it shouldn’t be included because the trust owned it.

The trial judge said the value of the home should be included, even though neither spouse directly owned it. The Court of Appeal disagreed and said it shouldn’t be included.

The majority of judges at the Supreme Court said the value of the home should be included in the family patrimony. They said that even though neither spouse owned the family home, Mr. Karam had “rights which confer use” to it. Even though trustees don’t own the property in a trust, the control they have over it may give them “rights which confer use.” In this case, the majority found that Mr. Karam had control over the family home. He had the power to decide who could use the home and who had a right to its value.

The majority said it didn’t matter whether a spouse transferred the home to a trust or, as in this case, the trust purchased the home directly.

Rules around family patrimony are rules of “public order.” That means people can’t get around them, for example by signing a contract that says something different. They apply no matter what. This is because the rules are meant to protect vulnerable spouses and put them on equal footing when a marriage ends.

Trusts are an example of the effect Canada’s two major legal traditions, common law and civil law, have on each other. Trusts are a common law concept. But they were introduced into Quebec civil law with the new *Civil Code* in the 1990s. A common law trust is a kind of shared ownership. But a civil law trust is the transfer of property to an independent patrimony that nobody owns.

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**Breakdown of the decision:** **Majority:** Justice Malcolm Rowe allowed the appeal (Chief Justice Wagner and Justices Abella, Brown, and Martin agreed) | **Dissenting:** Justice Suzanne Côté said Mr. Karam couldn’t use his powers as trustee to interfere with the rights of the beneficiaries of the trust (the children and Ms. Yared), so he

didn't solely have rights conferring use of the home; she would have dismissed the appeal (Justice [Karakatsanis](#) agreed)

**More information (case # 38089):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings** (in French only): [declaratory judgment](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)

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