



## Research on mistreatment of older adults in Quebec: summaries of scientific articles

### Patrimonial Gifts and Older Adults: Between Autonomy and Protection.

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#### REFERENCE

Morin, C. (2013). Patrimonial Gifts and Older Adults: Between Autonomy and Protection. *Revue de Droit de McGill*, 59(1), 141-164.

#### TEXT TYPE

**Format:** Scientific article

**Content:** Analysis of Quebec jurisprudence

#### DISCUSSED THEMES

Aptitude/inaptitude; Financial mistreatment; Law; Patrimonial gifts; Vulnerability Factors.

#### GOAL OR RESEARCH QUESTION

This article attempts to determine the extent to which the age of the individual transferring a patrimonial gift, through a legal act recorded in their will, influences the judges' reasoning when it is challenged. In other words, the central object of this article is to study the impact of age-related social representations in judicial decisions on patrimonial gifts.

#### PROBLEM

The transferral of patrimonial gifts from older adults raises many legal questions. For example, these gifts are regularly challenged by family members. This gives rise to a reflection on the need to protect older adults, while equally seeking to preserve their autonomy by avoiding leaning towards ageist prejudices.

#### METHODOLOGY

There is no section on methodology in this article.

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## RESULTS

An analysis of Québec jurisprudence puts forward the respect that the judges have for the gift-giver. At first glance, every individual is considered capable of consenting to a legal act, regardless of his or her age. The age of the consenting adult cannot, therefore, be the sole explanation which concludes that a person is incapable of offering their consent. Judges carefully analyse each situation before giving their judgment on gifts offered by the older adult. They take age into account, when necessary, to ensure a certain level of protection for the person, whether in his or her lifetime or posthumously. Thus, advanced age and other conditions may lead the judge to conclude that the gift-giver or the testator is unable to consent and then revoke the patrimonial gift.

## DISCUSSION/CONCLUSION

In sum, judges can rely on the advanced age of the gift-giver to justify their vulnerability. However, they have the burden of preserving the autonomy of the individual as well, despite the decline inherent in ageing. Thus, while judging the protection needs of certain older adults, judges must avoid generalisations or prejudices (ageism).

## AVENUES FOR PRATICE AND RESEARCH

Since this is the first article dealing with financial mistreatment in terms of patrimonial gifts, it would be interesting to investigate this new field of research in the future.

## DRAFTING DATE

December 06, 2014

