



# Syllabus

## Family Law (British Columbia)

**(Revised for January 2022)**

**Candidates are advised that the syllabus may be updated from time-to-time without prior notice.**

**Candidates are responsible for obtaining the most current syllabus available.**



## **Family Law (British Columbia)**

### **COURSE DESCRIPTION**

This course will review fundamental principles of family law. Significant emphasis will be placed on the economic and parenting consequences of family breakdown and divorce. Interjurisdictional orders fall outside the scope of the course. This course will not deal with the specialized topic of child protection. Contemporary issues such as family violence, rights of unmarried cohabitants, domestic contracts, and alternative dispute resolution processes will be addressed.

The primary sources of family law in Canada are found in the federal *Divorce Act* and in diverse provincial and territorial statutes. Provincial and territorial legislation in Canada differs widely in content. This course will focus, therefore, on federal divorce legislation and British Columbia statute law. Cross-references to statutes in other provinces and territories are not feasible because of their multiplicity and lack of uniformity.

The objectives of this course are as follows:

- to provide an overview of family law with particular emphasis on the economic and parenting consequences of family breakdown and divorce
- to analyse contemporary issues in family law
- to develop legal skills in dealing with family disputes
- to identify the special nature of family disputes and innovative approaches to their resolution, such as collaborative law, mediation, arbitration and custody assessments

### **EXAMINATION**

The examination is a three-hour open-book exam. Students may take any material they wish into the examination room. Students who are unfamiliar with open-book examinations are advised that they must know their material before the examination is held. There will not be time during the examination for students to search for solutions in areas with which they are not already familiar. A sample examination question paper is provided on the NCA website.



## **PRIMARY TEXT AND STATUTES**

1. Payne and Payne, *Canadian Family Law*, 8th ed., 2020, Irwin Law (hereinafter Payne, C.F.L.).
2. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended.
3. *Federal Child Support Guidelines*, SOR/97-175, 8 April, 1997, as amended.
4. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)
5. *Spousal Support Advisory Guidelines: The Revised User's Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)
6. *Family Law Act*, S.B.C. 2011, c. 25, as amended

## **REFERENCE MATERIALS**

- Payne and Payne, *Child Support Guidelines in Canada*, 2020, Irwin Law
- Trudi L. Brown, Q.C., *British Columbia Family Law Practice*, 2020 Edition, LexisNexis Canada



## **COURSE CONTENT**

### **A. INTRODUCTION**

#### **1. Definition of Marriage**

*Civil Marriage Act*, S.C. 2005, c. 33

*Civil Marriage of Non-Residents Act*, S.C. 2013, c. 32

*X.W.L. v. J.L.*, 2021 BCSC 860

*Family Law Act*, ss.1 and

#### **2. Constitutional Framework**

Payne, C.F.L., 10-11

#### **3. Fragmentation of Judicial Jurisdiction**

Payne, C.F.L., 11-13

#### **4. Formation and Annulment of Marriage**

Payne, C.F.L., 14-34

### **B. FAMILY VIOLENCE**

*Divorce Act*, ss. 2(1), 16(3)(j), 16(4)

Payne, C.F.L., 89-128 and see ch. 10

### **C. DIVORCE (INCLUDING COROLLARY PROCEEDINGS FOR SUPPORT AND CUSTODY)**

#### **1. Emotional Dynamics of Marriage Breakdown: Dispute Resolution Processes**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) as amended, s.7 to 7.7(3) and 10

*Family Law Act*, Part 2, Resolution of Family Disputes

Payne, C.F.L., 129-175

#### **2. Jurisdiction**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) as amended, ss. 3 to 6.3

Payne, C.F.L., 177-188

*Office of the Children's Lawyer v. Balev*, 2018 SCC 16, [2018] 1 SCR 398

*Kong v. Song*, 2019 BCCA 84.

*Droit de la famille — 21910*, 2021 QCCS 2081



**3. Effective Date and Effect of Divorce**

*Divorce Act*, ss. 12, 13 and 14  
Payne, C.F.L., 188-191

**4. Recognition of Foreign Divorces**

*Divorce Act*, s. 22  
Payne, C.F.L., 191-194

**5. Recognition of foreign order that varies parenting or contact order**

*Divorce Act*, s. 22.1  
Payne, C.F.L., 194

**6. Marriage Breakdown as Ground for Divorce**

*Divorce Act*, s. 8  
Payne, C.F.L., 195-209

**7. Bars to Divorce**

*Divorce Act*, s. 11  
Payne, C.F.L., 209-220  
*Brucker v. Marcovitz*, [2007] 3 S.C.R. 607

**8. Interim Support Orders**

*Divorce Act*, s. 15.1(2) and 15.2(2)  
Payne, C.F.L., 223-230 and 528-530

**9. Spousal Support Orders**

*Divorce Act*, ss. 15.2 and 15.3  
Payne, C.F.L., 221-381  
*Spousal Support Advisory Guidelines* (Rogerson/Thompson, Department of Justice, Canada, July 2008)  
*Spousal Support Advisory Guidelines: The Revised User's Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)  
*Moge v. Moge* [1992] 3 S.C.R. 813  
*Bracklow v. Bracklow*, [1999] 1 S.C.R. 420  
*Miglin v. Miglin*, [2003] 1 S.C.R. 303  
*Boston v. Boston*, [2001] 2 S.C.R. 413  
*Chutter v. Chutter*, 2008 BCCA 507, [2008] B.C.J. No. 2398 (C.A.) (Quicklaw)



*Leskun v. Leskun*, [2006] 1 S.C.R. 920  
*Redpath v. Redpath*, [2006] B.C.J. No. 1550 (C.A.) (Quicklaw)  
*McKenzie v. Perestrelo*, 2014 BCCA 161, [2014] B.C.J. No. 734 (C.A.) (Quicklaw)  
*Parton v. Parton*, 2018 BCCA 273

**10. Variation, Rescission or Suspension of Corollary Support Orders**

*Divorce Act*, s. 17  
Payne, C.F.L., 305-326 and 465-481  
*Federal Child Support Guidelines*, s. 14  
*L.M.P. v. L.S.*, [2011] 3 SCR 775

**11. Retroactive Spousal Support Orders**

*Kerr v Baranow*, 2011 SCC 10  
Payne, C.F.L., 327-333

**12. Spousal Support Advisory Guidelines**

Payne, C.F.L., 333-380

**13. Child Support Orders**

*Divorce Act*, ss. 15.1 and 15.3  
*Federal Child Support Guidelines*, SOR/97-175, 8 April, 1997, as amended  
Payne, C.F.L., 382-547 and 639-642  
*Chartier v. Chartier*, [1999] 1 S.C.R. 242  
*H.(U.V.) v. H.(M.W.)*, [2008] B.C.J. No. 717 (Quicklaw), 59 R.F.L. (6<sup>th</sup>) 25 (C.A.)  
*W.P.N. v. B.J.N.*, [2005] B.C.J. No. 12 (Quicklaw), 36 B.C.L.R. (4<sup>th</sup>) 330 (C.A.)  
*Francis v. Baker*, [1999] 3 S.C.R. 250  
*Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217  
*Kowalewich v. Kowalewich*, [2001] B.C.J. No. 1406 (Quicklaw), 19 R.F.L.(5<sup>th</sup>) 330 (C.A.)

**14. Retroactive Child Support Orders**

*D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra*, [2006] 2 S.C.R. 231  
*Michel v Graydon*, 2020 SCC 24  
*Colucci v Colucci*, 2021 SCC 24  
*Henderson v Micetich*, 2021 ABCA 103



## 15. Parenting Arrangements after Divorce

As of July 1, 2020, fundamental legislative changes will come into effect with respect to parenting disputes that arise between divorcing and divorced parents. Many of these changes reflect pre-existing provincial legislative provisions in Alberta, British Columbia or Nova Scotia. The changes include: replacing the traditional terminology of “custody” and “access” with terminology that relates to parenting; establishing a non-exhaustive list of criteria to assist courts in determining the “best interests of the child”; calling upon prospective litigants and their lawyers to address the feasibility of using out-of-court family dispute resolution services; introducing measures to assist courts in addressing family violence; and establishing a framework for situations where one of the parents wishes to relocate a child of the marriage. Candidates taking the Family Law examination in 2020 are expected to be familiar with these changes. The best current source respecting these changes are found online at the Department of Justice, Canada website in a document entitled: “The *Divorce Act* Changes Explained”. Examination candidates should focus their attention on sections 16(1) to 17(11) of the revised *Divorce Act* set out in this document.

### a. Definitions

Payne, C.F.L., 549-551

### b. Interim Parenting and Contact Orders

Payne, C.F.L., 554-557

### c. Parenting Orders; Parenting Responsibilities; Parenting Time; Shared Parenting

*Divorce Act*, ss.16.1-16.4

Payne, C.F.L., 557-576

### d. Contact Orders

*Divorce Act*, s. 16.5

Payne, C.F.L., 549-550, 576

### e. Terms and Conditions; Review Orders; Supervision Orders

Payne, C.F.L., 577-580

### f. Intended Change in Place of Residence; Relocation Rights

*Divorce Act*, ss. 16.7-16.96

Payne, C.F.L., 580-585

*JYL v TLL*, 2021 ABQB 680

### g. Variation of Orders

*Divorce Act*, s. 17(1)-17(11)



Payne, C.F.L., 598-606

**h. Best Interests of Child**

*Divorce Act*, s. 16(1)-16(7)

Payne, C.F.L., 585-592

**i. Voice of the Child**

Payne, C.F.L., 608-615

**j. Religious Upbringing**

Payne, C.F.L., 597-598

**k. Effect of Agreement; Parenting Plan**

*Divorce Act*, s.16.6 (parenting plan)

Payne, C.F.L., 595-596 and 616-617

**l. Conduct; Family Violence**

Payne, C.F.L., 550-551, 592-595

**m. Parental Conflict Resolution**

Payne, C.F.L., 606-608

**n. High Conflict; Parental Alienation**

Payne, C.F.L., 618-622

**D. CHILD AND SPOUSAL MAINTENANCE UNDER PROVINCIAL LEGISLATION**

**1. Definitions of "Child", "Parent" and "Spouse"; Status of Applicant**

*Family Law Act*, ss. 1, 3 and 146

Payne, C.F.L., 636-643

**2. Parentage**

*Family Law Act*, Part 3

**3. Statutory Support Obligations; Applicable Criteria; Types of Order**

*Family Law Act*, Part 7.

**4. Enforcement of Support Orders**

*Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127

**5. Variation Proceedings**





*Family Law Act*, ss. 152 (child support) and 167 (spousal support)

## **E. CARE OF AND TIME WITH CHILDREN UNDER PROVINCIAL LEGISLATION**

*Family Law Act*, Part 4

## **F. MATRIMONIAL PROPERTY**

*Family Law Act*, Part 5 (Property Division) and Part 6 (Pension Division)

### **1. Definitions of "Spouse" and "Spouses and Relationships Between Spouses"**

*Family Law Act*, ss. 1 and 3

### **2. Triggering Events**

*Family Law Act*, ss. 81 and 83

### **3. Nature of Interest**

*Family Law Act*, s. 81

### **4. Determining and Valuing Family Property and Family Debt; Excluded Property**

*Family Law Act*, ss. 83-87

*V.J.F v. S.K.W.*, 2016 BCCA 186, 2016 B.C.J. No. 853 (Quicklaw)

### **5. Court-Ordered Unequal Division of Family Property or Family Debt; Division of Excluded Property**

*Family Law Act*, ss. 95-96

*Parton v. Parton*, 2018 BCCA 273

### **6. Pensions**

*Family Law Act*, Part 6

### **7. Exclusive Possession Orders**

*Glowacki v Nesbeth*, 2021 BCSC 535.

*Sangha v Sangha*, 2021 BCSC 932

### **8. Spousal Agreements**

*Family Law Act*, ss. 92-94

*Hartshorne v. Hartshorne*, [2004] 1 S.C.R. 550



*Rick v. Brandsema*, [2009] 1 S.C.R. 295

**9. Interim and Temporary Orders**

*Family Law Act*, ss. 89-91

**10. Giving Effect to Property Division**

*Family Law Act*, s. 97

**11. Notional Disposition Costs**

*Willie v. Willie*, 2013 BCCA 318, [2013] B.C.J. No. 1433 (C.A.) (Quicklaw)



### Canadian Publishers

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### Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada ([www.canlii.org](http://www.canlii.org)). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your registration fee also includes free access to the Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

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