



National Committee on Accreditation

Syllabus Family Law (Alberta)

Revised for 2023 - 2024

Candidates are advised that this syllabus may be updated from time to time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.





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Family Law (Alberta)

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 restriction 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 form. This course will focus, therefore, on federal divorce legislation and Alberta 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.

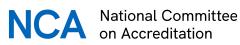




PRIMARY TEXT AND STATUTES

- 1. Payne and Payne, *Canadian Family Law*, 9th ed., 2022, Irwin Law, (hereinafter Payne, C.F.L.)
- 2. Payne and Payne, A Basic Guide to Canadian Family Law, 2023, 1st ed., Irwin Law
- 3. Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), as amended
- 4. *Federal Child Support Guidelines*, SOR/97-175, 8 April, 1997, as amended.
- 5. Spousal Support Advisory Guidelines (Department of Justice, Canada, July 2008)
- 6. *Spousal Support Advisory Guidelines: The Revised User's Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)
- 7. Family Law Act, S.A. 2003, c. F-4.5, as amended
- 8. Family Property Act, c. F-4.7, as amended





COURSE CONTENT

A. INTRODUCTION

1. **Definition of Marriage and Family** 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

2. **Constitutional Framework** Payne, C.F.L., 11-12

3. **Fragmentation of Judicial Jurisdiction** Payne, C.F.L., 12--13

4. Formation and Annulment of Marriage Marriage Act, R.S.A. 2000, c. M-5, as amended Payne, C.F.L., 14-35

B. FAMILY VIOLENCE

Payne, C.F.L., p. 93-128

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, ss. s.7 to 7.7(3) and 10 Family Law Act, S.A. 2003, c. F-4.5, ss. 5, 32(2)(c),97-98 Family Justice Services (Alberta Courts online) Payne C.F.L., 130-178 Association de médiation familiale du Québec v. Bouvier, 2021 SCC 54

2. Jurisdiction

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) ss. 3-6.3 Payne, C.F.L., 179-192 Office of the Children's Lawyer v. Baley, 2018 SCC 16 Droit de la famille — 21910, 2021 QCCS 2081

Effective Date and Effect of Divorce 3.

Divorce Act, ss. 12, 13 and 14 Payne, C.F.L., 193-195





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4. **Recognition of Foreign Divorces**

Divorce Act. s. 22 Payne, C.F.L., 195-198

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

Divorce Act, s. 22.1 Payne, C.F.L., 198-199

6. Marriage Breakdown as Ground for Divorce

Divorce Act, s. 8 Payne, C.F.L., 199-213

7. **Bars to Divorce**

Divorce Act. s. 11 Payne, C.F.L., 213-225 Bruker v. Marcovitz, [2007] 3 S.C.R. 607

8. **Interim Support Orders**

Divorce Act, subs. 15.1(2) and 15.2(2) Payne, C.F.L., 228-236 and 541-542

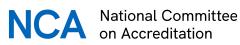
9. **Spousal Support Orders**

Divorce Act, ss. 15.2 and 15.3 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) Payne, C.F.L., 226-387 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 Leskun v. Leskun, [2006] 1 S.C.R. No. 920

10. **Retroactive Spousal Support Orders**

Kerr v Baranow, 2011 SCC 10 Payne, C.F.L., 332-337





11. **Spousal Support Advisory Guidelines**

Payne, C.F.L., 338-366 Wild v Wild, 2019 ABCA 159

12. Variation, Rescission or Suspension of Corollary Support Orders

Divorce Act, s. 17 Federal Child Support Guidelines, s. 14 Payne, C.F.L., 313-328 and 475-488 L.M.P. v. L.S., [2011] 3 SCR 775

13. **Child Support Orders**

Divorce Act, ss. 15.1 and 15.3 Federal Child Support Guidelines, as amended Child Support Recalculation Program Regulation, Alta. Reg. 287/2009, as amended Payne, C.F.L., 388-563 and 677-681 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. (6th) 25 (C.A.) Francis v. Baker, [1999] 3 S.C.R. 250 Ewing v. Ewing, 2009 A.J. No. 712 (Quicklaw) (C.A.) Contino v. Leonelli-Contino, [2005] 3 S.C.R. 217 Peters v Atchooay, 2022 ABCA 347

14. **Retroactive Child Support Orders**

Payne, C.F.L.,545-558 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

Fundamental legislative changes have been enacted with respect to parenting disputes that arise between divorcing and divorced parents. Many of these changes reflect preexisting 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: see "The *Divorce Act* Changes Explained" on the Department of Justice, Canada website, 2019 CanLIIDocs 3950. Examination candidates should focus their attention on sections 16(1) to 17(11) of the revised *Divorce Act*.

a. Definitions

Payne, C.F.L., 566-569

- b. Interim Parenting and Contact Orders Payne, C.F.L., 571-575
- c. Parenting Orders; Parenting Responsibilities; Parenting Time; Shared Parenting

Divorce Act, ss.16.1-16.4 Payne, C.F.L., 576-601 Barendregt v. Grebliunas, 2022 SCC 22 C.N.L. v. G.A.M., 2023 ONSC 3397 (indigenous children)

- d. Contact Orders Divorce Act, s. 16.5 Payne, C.F.L., 601-602
- e. Terms and Conditions; Review Orders; Supervision Orders Payne, C.F.L., 602-606
- f. Intended Change in Place of Residence; Relocation Rights Divorce Act, ss. 16.7-16.96 Payne, C.F.L., 606-614 J.Y.L. v. T.L.L., 2021 ABQB 680
- **g. Variation of Orders** *Divorce Act*, s. 17(1)-17(11) Payne, C.F.L., 631-640





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- h. Best Interests of Child *Divorce Act*, s. 16(1)-16(7) Payne, C.F.L., 614-624
- i. Voice of the Child Payne, C.F.L., 642-650 S.K. v. D.G., 2022 ABQB 425
- j. Religious Upbringing Payne, C.F.L.,629-631
- k. Effect of Agreement; Parenting Plan *Divorce Act*, s.16.6 (parenting plan) Payne, C.F.L., 627-629 and 651-652
- I. Conduct; Family Violence Payne, C.F.L., 616-619 and 624-627
- m. Parental Conflict Resolution Payne, C.F.L., 640-642
- n. High Conflict; Parental Alienation Payne, C.F.L., 653-659

D. CHILD AND SPOUSAL SUPPORT UNDER PROVINCIAL LEGISLATION

1. General

> Family Law Act, S.A. 2003, c. F-4.5, as amended Adult Interdependent Relationships Act, S.A. 2002, c. A-4.5 Alberta Child Support Guidelines Payne, C.F.L., 674-681

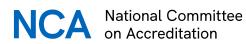
2. **Definitions**

Family Law Act, ss. 46-48

- 3. **Child Support Statutory Criteria** Family Law Act, ss. 49-55
- 4. Spousal Support or Adult Independent Partner – Statutory Criteria Family Law Act, ss. 56-63
- 5. **General Matters**

Family Law Act, ss. 64-82





E. ESTABLISHING PARENTAGE

Family Law Act, ss. 6-15

F. GUARDIANSHIP, CUSTODY AND ACCESS (PARENTING AND CONTACT **ORDERS) UNDER PROVINCIAL LEGISLATION; CHILD ABDUCTION**

Family Law Act, S.A. 2003, c. F-4.5, ss. 16 - 45

G. MATRIMONIAL PROPERTY

- 1. **Property Division** Family Property Act, c. F-4.7, Part 1
- 2. Application by spouse

Family Property Act, s.3

- 3. Application by adult interdependent partner Family Property Act, ss.1, 1.1 and 3.1
- 4. Conditions precedent to application — spouses Family Property Act, s. 5
- 5. Conditions precedent to application — adult interdependent partners Family Property Act, s. 5.1
- 6. Time for application — spouses Family Property Act, s. 6
- 7. Time for application — adult interdependent partners Family Property Act, s. 6.1
- 8. **Distribution of Property** Family Property Act, s. 7
- 9. Matters to be considered Family Property Act, s. 8
- 10. Power of the Court Family Property Act, s. 9





11. Severance of Joint Tenancy

Felske Estate v. Donszelman, [2009] A.J. No. 619 (C.A.) (Quicklaw)

12. Possession of Matrimonial Home

Family Property Act, c. F-4.7, Part 2 *Protection Against Family Violence Act*, R.S.A. 2000, c.P-27, as amended

13. Occupation Rent

Milne v. Milne, [2009] A.J. No. 360 (C.A.) (Quicklaw), paras. 83-84





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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 (<u>www.canlii.org</u>). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your exam registration fee also includes free access to the Advance Quicklaw resources of LexisNexis. 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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