



Federation of
Law Societies
of Canada

NCA National Committee
on Accreditation

Syllabus

Family Law

(British Columbia)

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.

V2



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 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. *JP Boyd on Family Law*, online Clicklaw Wikibooks
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.B.C. 2011, c. 25, as amended



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., 11-12

3. Fragmentation of Judicial Jurisdiction

Payne, C.F.L., 12-13

4. Formation and Annulment of Marriage

Payne, C.F.L., 14-35

B. FAMILY VIOLENCE

Family Law Act, ss. 1, 37(2)(g), 37(2) (h), 38, 90, 183-184

C.Y.J. v R.J., 2022 BCSC 1901 (protection order)

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, s.7 to 7.7(3) and 10

Family Law Act, Part 2, Resolution of Family Disputes

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.) as amended, ss. 3 to 6.3

Payne, C.F.L., 179-192



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., 193-195

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, s. 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

Payne, C.F.L., 226-387

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., 313-328 and 475-488
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., 332-337

12. Spousal Support Advisory Guidelines

Payne, C.F.L., 338-360 and 364-368

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., 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.)
W.P.N. v. B.J.N., [2005] B.C.J. No. 12 (Quicklaw), 36 B.C.L.R. (4th) 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.(5th) 330 (C.A.)



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

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., 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

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

l. 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 MAINTENANCE UNDER PROVINCIAL LEGISLATION

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

Family Law Act, ss. 1, 3 and 146

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

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

Sangha v Sangha, 2021 BCSC 932

MacDonell v. MacDonell, 2021 BCCA 471

C.M.H. v J.A.R., 2022 BCSC 1684

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



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URL: <http://www.carswell.com/>

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). 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.

Sign in to Advance Quicklaw via <http://www.lexisnexis.com/ca/legal>. The first time you sign in you will be asked to change or personalize your password. Remember your User ID and password are personal, and should not be shared with anyone.

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