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# Syllabus

# Family Law

## (Ontario)

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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.



## Family Law (Ontario)

### 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 form. This course will focus, therefore, on federal divorce legislation and Ontario 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 with this syllabus.

### 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, 1<sup>st</sup> ed. Irwin Law
3. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended



4. *Federal Child Support Guidelines* (Department of Justice, Canada)
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*, R.S.O. 1990, c. F.3, as amended
8. *Children's Law Reform Act*, R.S.O. 1990, c. C. 12, 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

#### **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

**5. Support and Property Rights of Unmarried Cohabitants**

Payne, C.F.L., 41-56

*Kerr v. Baranow and Vanasse v. Seguin*, [2011] 1 S.C.R. 269

**B. FAMILY VIOLENCE**

*Ahluwalia v Ahluwalia*, 2023 ONCA 476

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

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

**1. Emotional Dynamics of Marriage Breakdown: Reconciliation, Negotiation, Mediation, Arbitration**

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

*Children's Law Reform Act*, ss. 30 (assessments) and 31 (mediation)

*Family Law Act*, s. 3 (mediation)

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. 3-6.3

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

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

*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*, 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

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

*Leskun v. Leskun*, [2006] 1 S.C.R. No. 920

*Fisher v. Fisher*, [2008] O.J. No. 38 (Quicklaw), 47 R.F.L. (6th) 235 (Ont. C.A.)

*Davis v. Crawford*, 2011 ONCA 294, [2011] O.J. No. 1719 (Quicklaw)

**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., 338-360 and 375-378

**12. 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



### 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  
*Wright v. Zaver*, [2002] O.J. No. 1098 (Quicklaw), 24 R.F. L. (5th) 207 (C.A.)  
*Francis v. Baker*, [1999] 3 S.C.R. 250  
*Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217  
*A.M.D. v. A.J.P.*, [2002] O.J. No. 3731 (Quicklaw), sub nom. *Drygala v. Pauli* (2002), 29 R.F.L. (5th) 293(C.A.)

### 14. Retroactive Child Support Orders

Payne, C.F.L., 545-558  
*Michel v. Graydon*, 2020 SCC 24  
*Colucci v. Colucci*, 2021 SCC 24

### 15. Parenting Arrangements after Divorce

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



- 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 SUPPORT UNDER PROVINCIAL LEGISLATION; FAMILY LAW ACT**

- 1. General**  
Payne, C.F.L., 674-681  
*Ontario Child Support Guidelines*, Ont. Reg. 391/97
- 2. Definitions of "Child", "Parent", "Spouse" and "Dependant"**  
*Family Law Act*, ss. 1 and 29
- 3. Statutory Support Obligations**  
*Family Law Act*, ss. 30, 31, 32
- 4. Status of Applicant**



*Family Law Act*, subs. 33(2) and (3)

**5. Statutory Criteria**

*Family Law Act*, s. 33

**E. CHILD CUSTODY UNDER PROVINCIAL LEGISLATION; THE ONTARIO CHILDREN'S LAW REFORM ACT**

*Children's Law Reform Act*, ss. 24, 30, 31 and 46

**F. OWNERSHIP AND EQUALIZATION OF FAMILY PROPERTY - PART ONE OF ONTARIO FAMILY LAW ACT**

**1. Introduction**

Payne, C.F.L., 739

**2. Definition of "Court"**

*Family Law Act*, subs. 1(1)

**3. Definition of "Spouse"**

*Family Law Act*, subs. 1(1) and 1(2)  
Payne, C.F.L., 740

**4. First Nations Property; Foreign Immovable property**

Payne, C.F.L., 740-741

**5. Domestic Contracts**

*Family Law Act*, subs. 2(10), 4.2(6) and 4(2)7  
Payne, C.F.L., 741 and 787-788

**6. Conflict of Laws**

*Family Law Act*, s. 15

**7. Ownership of Property; Resulting and Constructive Trusts**

*Family Law Act*, ss. 10 and 14  
Payne, C.F.L. 742-745

**8. Effect of Bankruptcy on Equalization of Net Family Properties**

*Schreyer v. Schreyer*, 2011 SCC 35, [2011] S.C.J. No. 35 (Quicklaw)

**9. Triggering Events for Equalization of Net Family Properties; Limitation Periods**

*Family Law Act*, ss. 5, 7 and 2(8)





Payne, C.F.L., 746-754

**10. Equalization of Net Family Properties; Significance of Ownership; Definition of Property; Pensions; Valuation; Pre-Marital Deductions; Excluded Property**

*Family Law Act*, s. 4

Payne, C.F.L., 754-788

**11. Unequal Division of Net Family Properties**

*Family Law Act*, sub. 5(6)

Payne, C.F.L., 788-794

**12. Entitlement on Death**

*Family Law Act*, subs. 5(2) and s. 6

Payne, C.F.L., 795-798

**13. Financial Disclosure; Mandatory Property and Financial Statements**

*Family Law Act*, s. 8

Payne, C.F.L., 798-800

**14. Powers of Court; Interest; Restraining Orders and Preservation Orders; Retrospective Operation;**

*Family Law Act*, ss. 9, 11, 12 and 13

Payne, C.F.L., 800- 808

**15. Occupation Rent and Accountancy Claims**

Payne, C.F.L., 808-810

**G. POSSESSION AND DISPOSITION OF MATRIMONIAL HOME UNDER PART II OF ONTARIO FAMILY LAW ACT**

**1. Jurisdiction**

*Family Law Act*, s. 1(1)

**2. Definition of Matrimonial Home; Designation of Matrimonial Home**

*Family Law Act*, ss. 18 and 20

Payne, C.F.L., 810

**3. Disposition of Matrimonial Home**

*Family Law Act*, ss. 21, 22 and 23

Payne, C.F.L., 811

**4. Possession of Matrimonial Home; Variation Proceedings; Effect of Death; Registration Against Land; Situs**

*Family Law Act*, ss. 19 and 24

Payne, C.F.L., 811-820



## H. DOMESTIC CONTRACTS

Payne, C.F.L., 57-92

### 1. **Marriage Contracts, Cohabitation Agreements, Separation Agreements**

*Family Law Act*, ss. 51, 52, 53 and 54

Payne, C.F.L., 70-73

### 2. **Formal Requirements; Capacity to Contract**

*Family Law Act*, s. 55

Payne, C.F.L., 73-75

### 3. **Setting Aside Domestic Contracts;**

*Family Law Act*, s. 56 and subs. 33(4)

Payne, C.F.L., 76-83 and 86-87

### 4. **Incorporation of Terms of Domestic Contract in Judgments**

Payne, C.F.L., 87-88

### 5. **Filing, Enforcement, Variation and Termination of Support Provisions of Domestic Contracts**

*Family Law Act*, ss. 35, 37 and 38

Payne, C.F.L., 88-92



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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 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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