



Federation of
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Syllabus

Family Law (Canada)

Revised January 2024

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 (Canada)

IMPORTANT NOTICE

As Canadian family law falls within both federal and provincial jurisdiction, each province will have statutes and jurisprudence relating to matters that fall within s.92(12) & (13) of the Constitution Act, 1867 (30 & 31 Victoria, c. 3 (U.K.)). Candidates are not expected to learn these bodies of provincial law for all jurisdictions. Rather, it is assumed that candidates will primarily focus on the statutes and caselaw in the jurisdiction in which they seek to practice. However, because a significant number of candidates typically seek to practice in Ontario, this course syllabus primarily includes Ontario's statutory regime and other materials as a default (subject to further comments on readings and materials below). For candidates seeking to practice in a Canadian jurisdiction other than Ontario, they should follow the topics and issues set out in this course syllabus; however, they may use the relevant corresponding statutes and materials from another Canadian jurisdiction. In those circumstances, particularly on examinations, it will be required that candidates properly identify the statutory section of a given Canadian jurisdiction they are relying on in response to an exam question, and pinpoint cites to relevant provincial jurisprudence. For example, where this syllabus refers to s.56 (4) of the Ontario *Family Law Act*, R.S.O. 1990, Chapter F.3 for the court's authority to set aside a domestic contract for the failure of a party to make full financial disclosure, candidates seeking to practice law in British Columbia could alternatively use s.93(3)(a) of the *Family Law Act*, SBC 2011 Chapter 25.

Provincial and territorial family law statutes and jurisprudence can be accessed through various online sources. (See e.g. CanLII, online: <https://www.canlii.org/en/>; Ontario, e-Laws, online: Government of Ontario <https://www.ontario.ca/laws>, and others.)

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 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, 1st 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

Payne, C.F.L., p. 93-128
Ahluwalia v Ahluwalia, 2023 ONCA 476
McIntosh v Baker, 2022 ONSC 4235
C.Y.J. v R.J., 2022 BCSC 1901
LDB v ANH, 2023 BCCA 480 (vexatious litigation)

Nonomura, Robert; Poon, Julie; Scott, Katreena; Straatman, Anna-Lee; Jaffe, Peter. (2021). *Coercive Control. Family Violence & Family Law Brief (3)*. London, Ontario: Centre for Research & Education on Violence Against Women & Children. ISBN 978-1-988412-48-1

Katz, Emma; Nikupeteri, Anna; Laitinen, Merja, "When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence", *Child Abuse Review* Vol. 29: 310–324 (2020), published 19 May 2020 in Wiley Online Library

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
Chutter v. Chutter, 2008 BCCA 507
Fisher v. Fisher 2008 ONCA 11
Davis v. Crawford, 2011 ONCA 294

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
H.(U.V.) v. H.(M.W.), [2008] B.C.J. No. 717
Wright v. Zaver, [2002] O.J. No. 1098 (Quicklaw), 24 R.F. L. (5th) 207 (C.A.) CanLII 41409 (ONCA)
Francis v. Baker, [1999] 3 S.C.R. 250
Contino v. Leonelli-Contino, [2005] 3 S.C.R. 217
Drygala v. Pauli, 2002 CanLII 41868 (ONCA)
Peters v Atchooay, 2022 ABCA 347
Kowalewich v. Kowalewich, 2001 BCCA 450

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)
L.L. v. A.I., 2023 BCSC 1503 ((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
Barendregt v. Grebliunas, 2022 SCC 22
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
- 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



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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). 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 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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