



Syllabus

Family Law (Ontario)

(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 (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*, 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* (Department of Justice, Canada)
4. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)
5. *Family Law Act*, R.S.O. 1990, c. F.3, as amended
6. *Children's Law Reform Act*, R.S.O. 1990, c. C. 12, as amended

REFERENCE MATERIALS

- Payne and Payne, *Child Support Guidelines in Canada, 2020*, Irwin Law
- *Matrimonial Property Law in Canada* (Looseleaf Service), Ontario tab, Carswell, Thomson Professional Publishing, Toronto/Vancouver



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., 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

5. Support and Property Rights of Unmarried Cohabitants

Payne, C.F.L., 40-54

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

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: 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., 129-175

2. Jurisdiction

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

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

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., 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, subs. 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
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., 327-333

11. Spousal Support Advisory Guidelines

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

12. 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

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
Senos v. Karcz, 2014 ONCA 459, [2014] O.J. No. 2808 (C.A.) (Quicklaw)
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.)
Lewi v. Lewi, [2006] O.J. No. 1847 (Quicklaw), 28 R.F.L. (6th) 250 (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

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
Abumatar v Hamda, 2021 ONSC 2165

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 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: 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., 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



- I. 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 SUPPORT UNDER PROVINCIAL LEGISLATION; FAMILY LAW ACT

- 1. General**
Payne, C.F.L., 636-643
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. STATUS OF CHILDREN UNDER ONTARIO CHILDREN'S LAW REFORM ACT

- 1. Parentage**
Children's Law Reform Act, Part I

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

Children's Law Reform Act, ss. 18-46, especially ss. 24, 30, 31 and 46
Payne, C.F.L., 643-694
Whitaker v Legue, 2018 ONSC 1557 at paras. 13-16 (grandparents)
Office of the Children's Lawyer v. Baley, 2018 SCC 16



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

1. Introduction

Payne, C.F.L., 697

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., 698

4. First Nations Property; Foreign Immovable property

Payne, C.F.L., 698-699

5. Domestic Contracts

Family Law Act, subs. 2(10), 4.2(6) and 4(2)7
Payne, C.F.L., 699 and 744-745

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. 700-703

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., 703-712

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., 712- 745



11. Unequal Division of Net Family Properties

Family Law Act, sub. 5(6)
Payne, C.F.L., 745-751
Serra v. Serra, [2009] O.J. No. 432 (Quicklaw), 246 O.A.C. 37 (C.A.)

12. Entitlement on Death

Family Law Act, subs. 5(2) and s. 6
Payne, C.F.L., 752-755

13. Financial Disclosure; Mandatory Property and Financial Statements

Family Law Act, s. 8
Payne, C.F.L., 755-757

**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., 757-764

15. Occupation Rent and Accountancy Claims

Payne, C.F.L., 764-765
Higgins v. Higgins, [2001] O.J. No. 3011 (Sup. Ct.) (Quicklaw)

**H. 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., 766

3. Disposition of Matrimonial Home

Family Law Act, ss. 21, 22 and 23
Payne, C.F.L., 766-767

**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., 767-773



5. Partition and Sale

Martin v. Martin (1992), 8 O.R., (3ed) 41 (C.A.)

6. Severance of Joint Tenancy

Hansen Estate v. Hansen, 2012 ONCA 112, [2012] O.J. No. 780(C.A.) (Quicklaw)

I. DOMESTIC CONTRACTS

Payne, C.F.L., 55-88

1. Marriage Contracts, Cohabitation Agreements, Separation Agreements

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

Payne, C.F.L., 66-71

2. Formal Requirements; Capacity to Contract

Family Law Act, s. 55

Payne, C.F.L., 71-72

3. Setting Aside Domestic Contracts;

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

Payne, C.F.L., 72-80 and 83-84

LeVan v. LeVan, [2008] O.J. No. 1905 (Quicklaw), 51 R.F.L. (6th) 237 (C.A.)

4. Incorporation of Terms of Domestic Contract in Judgments

Payne, C.F.L., 84-85

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

Family Law Act, ss. 35, 37 and 38

Payne, C.F.L., 85-87



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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.

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