

Table of Contents

CHAPTER 1. THE FAMILY LAW CONTEXT

§ 1:1	Overview
§ 1:2	Canadian Families
§ 1:3	What is “Family Law”?
§ 1:4	Early History of Family Law
§ 1:5	The Nineteenth and Early Twentieth Centuries—First Reforms
§ 1:6	The Late Twentieth Century—Reform and the Modern Era
§ 1:7	Expanding Rights and Responsibilities of Fathers
§ 1:8	Children’s Rights
§ 1:9	Alternative Dispute Resolution
§ 1:10	Towards National Standards and “Average Justice”
§ 1:11	The Evolution of the Practice of Family Law
§ 1:12	Federalism and Family Law
§ 1:13	Marriage
§ 1:14	Divorce and Corollary Relief
§ 1:15	Parenting Apart Under Provincial Laws
§ 1:16	Property Division
§ 1:17	Conflicting Orders—Federal Paramountcy
§ 1:18	—Unmarried Cohabitants and the Definition of “Spouse”
§ 1:19	Jurisdiction of Family Courts and the <i>Constitution Act</i> s. 96
§ 1:20	The <i>Charter of Rights</i> and Family Law
§ 1:21	Indigenous Family Law Issues
§ 1:22	Family Courts
§ 1:23	Family Court Rules
§ 1:24	Mandatory Information Program (MIP)
§ 1:25	Family Court Rules—Commencing a Family Proceeding
§ 1:26	Case Conferences
§ 1:27	Motions for Temporary Relief
§ 1:28	Interim Financial Support for Litigation
§ 1:29	Disclosure and Pre-Trial Questioning
§ 1:30	Case Management
§ 1:31	Assessments and Involvement of the Children’s Lawyer
§ 1:32	Settlement Conferences
§ 1:33	Trials
§ 1:34	Appeals
§ 1:35	Costs
§ 1:36	Self-Representation in the Family Justice Process
§ 1:37	Family Dispute Resolution Outside the Courts
§ 1:38	Statutory Duties for Lawyers and Litigants
§ 1:39	Negotiation Between the Parties
§ 1:40	Mediation

- § 1:41 Arbitration
- § 1:42 Med-Arb
- § 1:43 Parenting Co-ordination
- § 1:44 Collaborative Family Law
- § 1:45 Canadian Family Law in an International Context
- § 1:46 The Role of Family Law Lawyers

CHAPTER 2. FAMILY VIOLENCE

- § 2:1 Introduction
- § 2:2 What is Family Violence?
- § 2:3 The Incidence of Family Violence
- § 2:4 Nature of Family Violence
- § 2:5 Nature—Coercive Control
- § 2:6 —Violent Resistance
- § 2:7 —Common Couple Violence
- § 2:8 —Separation Engendered Violence
- § 2:9 —Mental Health Conditions Resulting in Violence
- § 2:10 Effects on Children
- § 2:11 Barriers to Leaving
- § 2:12 The Role of the Police
- § 2:13 Criminal Prosecutions
- § 2:14 Specialized Criminal Courts for Domestic Violence
- § 2:15 The Partner Assault Response (PAR) Program
- § 2:16 Sentencing in Criminal Court
- § 2:17 Peace Bond (or Recognizance)
- § 2:18 Intimate Partner Violence Screening by Family Justice Professionals
- § 2:19 Restraining Orders in Family Court
- § 2:20 Orders for Exclusive Possession of the Matrimonial Home
- § 2:21 Parenting Time and Decision-Making Responsibility
- § 2:22 Family Violence and Support
- § 2:23 Tort Law and Family Violence
- § 2:24 The Role of the Child Protection System in Responding to Family Violence
- § 2:25 Concurrent Proceedings in Family Violence Cases
- § 2:26 Criminal and Family Proceedings

CHAPTER 3. VALIDITY OF MARRIAGE & ANNULMENT

I. INTRODUCTION

- § 3:1 Historical Background
- § 3:2 Annulment and Divorce
- § 3:3 Presumption of Validity of Marriage
- § 3:4 Essential and Formal Validity

II. ESSENTIAL VALIDITY OF MARRIAGE

- § 3:5 The Traditional Opposite Sex Requirement

TABLE OF CONTENTS

- § 3:6 Polygamous Marriage Prohibited
- § 3:7 Ability to Consummate
- § 3:8 Ability to Consummate
- § 3:9 Outside Prohibited Degrees of Consanguinity and Affinity
- § 3:10 No Prior Existing Marriage
- § 3:11 Consent—Capacity to Understand
- § 3:12 —Duress
- § 3:13 —Limited Purpose Marriages, Fraud, and Mistake
- § 3:14 Age
- § 3:15 Formal Validity of Marriage
- § 3:16 The Effect of Invalidity—The Void/Voidable Distinction

CHAPTER 4. DIVORCE

- § 4:1 History of Canadian Divorce Law
- § 4:2 History of Canadian Divorce Law
- § 4:3 The Social Context of Divorce—Divorce and Separation Rates
- § 4:4 Consequences of Separation and Divorce for Adults
- § 4:5 Consequences of Separation and Divorce for Children
- § 4:6 Separation, Divorce and the Role of Lawyers
- § 4:7 Jurisdiction: *Divorce Act* s. 3
- § 4:8 Recognition of Foreign Divorce Decrees
- § 4:9 Recognition of Foreign Divorce Decrees
- § 4:10 Marriage Breakdown: *Divorce Act*, s. 8(1)
- § 4:11 Living Separate and Apart: *Divorce Act*, s. 8(2)(a)
- § 4:12 Adultery—Nature of Adultery
- § 4:13 —Proof of Adultery
- § 4:14 —Privilege Against Incrimination
- § 4:15 Cruelty
- § 4:16 Bars to Proceedings: Introduction
- § 4:17 Collusion
- § 4:18 Condonation
- § 4:19 Connivance
- § 4:20 Reasonable Arrangements for the Support of Children
- § 4:21 Duties of Lawyers & Reconciliation
- § 4:22 Effective Date of Divorce

CHAPTER 5. FAMILY PROPERTY

- § 5:1 Introduction
- § 5:2 Early Statutory Reforms
- § 5:3 Supreme Court of Canada Jurisprudence—Mid to Late 20th Century
- § 5:4 Statutory Reform in the 1970s and 1980s
- § 5:5 Introduction to Property Claims by Unmarried Partners
- § 5:6 Rights of Unmarried Cohabitants are Limited
- § 5:7 *Charter* Challenges to the Unequal Treatment of Unmarried Cohabitants
- § 5:8 Unjust Enrichment and the Constructive Trust Remedy

- § 5:9 Supreme Court—Development of the Law of Unjust Enrichment
- § 5:10 Unjust Enrichment and the Joint Family Venture
- § 5:11 How the *FLA* Equalization Scheme Works
- § 5:12 Special Treatment of the Matrimonial Home
- § 5:13 Variation of Equalization Amount in Unconscionable Circumstances
- § 5:14 No Net Family Property Below Zero
- § 5:15 Domestic Agreements
- § 5:16 Section 12—Orders for Preservation
- § 5:17 Procedural Issues
- § 5:18 Determining the Valuation Date
- § 5:19 Defining “Property”—Contingent Interests
- § 5:20 Defining Property—Professional Licences
- § 5:21 Equalization and Constructive and Resulting Trusts
- § 5:22 Valuing Property for the Purpose of Equalization
- § 5:23 Notional Disposition Costs
- § 5:24 Deductions From NFP
- § 5:25 Definition of “Exclusions”
- § 5:26 Differences Between Deductions and Exclusions
- § 5:27 Tracing and Comingling of Excluded Assets
- § 5:28 Tracing of Excluded Money and Joint Bank Accounts
- § 5:29 Variation of Equalization—s 5(6) *FLA*
- § 5:30 Implementing the Equalization Payment—Section 9 of the *FLA*
- § 5:31 Pension Plans and Equalization
- § 5:32 Canada Pension Plan
- § 5:33 Registered Retirement Savings Plans (RRSPs)
- § 5:34 Employer-Sponsored Pension Plans
- § 5:35 Features of Employer-Sponsored Plans
- § 5:36 Valuation of Employer Pension Plans
- § 5:37 Paying the Equalization When There is a Pension
- § 5:38 Pension Transfers: *FLA* S. 10.1(3)
- § 5:39 When the Pension in “Pay”: *FLA* s. 10.1(5) & Survivor’s Pension
- § 5:40 Some Property Review Problems

CHAPTER 6. THE FAMILY HOME

- § 6:1 Introduction—The Family Home Receives Special Treatment
- § 6:2 Unmarried Cohabitants and the Family Residence
- § 6:3 Defining the Matrimonial Home in Ontario—Overview
- § 6:4 Leasehold Interests
- § 6:5 Shares in a Corporation—Section 18(2)
- § 6:6 Seasonal Residences (More Than One Matrimonial Home)
- § 6:7 Parts of a Property Not Treated as “Matrimonial Home”—Section 18(3)
- § 6:8 Orders for Exclusive Possession
- § 6:9 Temporary Orders for Exclusive Possession, s. 24—The Children’s Best Interests

TABLE OF CONTENTS

- § 6:10 Final Orders for Exclusive Possession After Trial
- § 6:11 Orders for Occupation Rent
- § 6:12 Issues for Unmarried Cohabitants
- § 6:13 Selling or Encumbering a Matrimonial Home

CHAPTER 7. THE LAW OF PARENTAGE

I. INTRODUCTION

- § 7:1 Generally

II. CONCEPTION BY INTERCOURSE: BIRTH REGISTRATION & PRESUMPTIONS OF PATERNITY

- § 7:2 Presumption of Paternity
- § 7:3 Proving Paternity
- § 7:4 Deception and Paternity

III. CHILDREN CONCEIVED BY ASSISTED REPRODUCTION

- § 7:5 Federal Regulation of Assisted Reproduction
- § 7:6 Spousal Consent to Assisted Reproduction
- § 7:7 Assisted Reproduction and Parentage
- § 7:8 Agreements for Reproduction by Sexual Intercourse

IV. ADOPTION

- § 7:9 Voluntary Adoptions and Parentage
- § 7:10 Openness in Adoption

CHAPTER 8. CHILD SUPPORT

- § 8:1 Overview
- § 8:2 Legal Basis for Child Support
- § 8:3 Consistent Guidelines Across the Country—Except Québec
- § 8:4 Extended obligation for people other than parents:
 - Stepparents
- § 8:5 Adult Children
- § 8:6 Determining the Amount—The *Child Support Guidelines*
- § 8:7 The Extended Definition of Parent
- § 8:8 Stepparents and the Obligation to Pay Child Support
- § 8:9 The Amount of Child Support Payable by Stepparents
- § 8:10 “Paternity Misattribution”
- § 8:11 The Introduction of the *Child Support Guidelines*
- § 8:12 Tax Treatment of Child Support
- § 8:13 The Objectives the Guidelines
- § 8:14 The CSG Are Mandatory
- § 8:15 The Tables and Determining the Payor’s Income
- § 8:16 High Income Payors: CSG s. 4
- § 8:17 Special Child-Related Expenses: CSG s. 7

- § 8:18 Undue Hardship: *CSG* s. 10
- § 8:19 Adjustments for Shared and Split Parenting Arrangements:
 CSG 8 & 9
- § 8:20 Determining Income for Child Support Purposes
- § 8:21 Income as of What Date?
- § 8:22 Income Averaging
- § 8:23 Closely held Corporations
- § 8:24 Imputing Income
- § 8:25 Section 7 Expenses (“Add Ons”)
- § 8:26 Commonly Occurring Section 7 Expenses: s. 7(1)(a), (b), (c) and
 (e)
- § 8:27 “Extraordinary” Expenses: s. 7(1)(d) and (f)
- § 8:28 “Necessary” and “Reasonable”
- § 8:29 Entitlement to Support for Adult Children
- § 8:30 Onus of Proof in Applications for Support of Adult Children
- § 8:31 Illness or Disability—Adult Disabled Children
- § 8:32 Unemployment as “other cause”
- § 8:33 Post-Secondary Education as “other cause”
- § 8:34 Estrangement—are estranged adult children entitled to
 support?
- § 8:35 Quantum of Support for Adult Children: *CSG* s. 3
- § 8:36 Section 7(1)(e): Post-Secondary Education Costs
- § 8:37 High Income Earners and Child Support: *CSG* s. 4
- § 8:38 Child Support and Split Parenting Time: (s 8 *CSG*)
- § 8:39 Child Support and Shared Parenting Time: *CSG* s. 9
- § 8:40 Meeting the 40% Threshold—How to count time?
- § 8:41 Determining Child Support under if s. 9—*Contino v.*
 Leonelli-Contino
- § 8:42 Effect of *Contino*
- § 8:43 Undue Hardship: *CSG* s. 10
- § 8:44 Reducing the Amount of Child Support “On Consent”
- § 8:45 “Reasonable Arrangements”
- § 8:46 “Special Provisions for Children”
- § 8:47 Change in Child Support Orders—The Requirement of
 Material Change
- § 8:48 Retroactive Child Support
- § 8:49 Why Do Recipients Wait to Make Claims for Child Support?
- § 8:50 Is It Fair to Order Retroactive Support?
- § 8:51 How Far Back Should a Retroactive Order Go?
- § 8:52 Still be a “Child of the Marriage” at the Time of the
 Retroactive Application?
- § 8:53 Retroactive Decreases in Child Support
- § 8:54 Recalculation Service
- § 8:55 Enforcement of Child Support Obligations

CHAPTER 9. SPOUSAL SUPPORT

- § 9:1 Overview
- § 9:2 Constitutional Context and Legislative History

TABLE OF CONTENTS

§ 9:3	Introduction to Basic Principles—Objectives and Factors of Spousal Support
§ 9:4	—The Trilogy and the Causal Connection Test
§ 9:5	— <i>Moge</i> and <i>Bracklow</i>
§ 9:6	—The <i>Spousal Support Advisory Guidelines</i>
§ 9:7	The SSAG and the Reality of Spousal Support in Canada
§ 9:8	Entitlement to Spousal Support for Unmarried Cohabitants
§ 9:9	Unmarried Cohabitants—Defining “cohabitation”
§ 9:10	<i>FLA</i> s. 29—“Continuous cohabitation for three years or more”
§ 9:11	—A relationship of “some permanence”?
§ 9:12	Current Approach to Spousal Support Entitlement
§ 9:13	Compensatory Support— <i>Moge v Moge</i>
§ 9:14	“Need” in Addition to “Compensation:” <i>Bracklow v. Bracklow</i>
§ 9:15	Spousal Support Entitlement—Conduct and Self-sufficiency: <i>Leskun</i>
§ 9:16	—Prof. Rollie Thompson
§ 9:17	The SSAG History and Basics
§ 9:18	SSAG—“Without Child Support” Formula
§ 9:19	—“With Child Support” Formula
§ 9:20	—Ceilings and Floors
§ 9:21	—Other Exceptions to the Application of the SSAG
§ 9:22	—Restructuring
§ 9:23	The “ <i>Revised User’s Guide</i> ” (The <i>RUG</i>)
§ 9:24	The Courts and the SSAG
§ 9:25	Variation
§ 9:26	Review Orders

CHAPTER 10. POST-SEPARATION PARENTING

§ 10:1	Introduction
§ 10:2	Social Context: The Value of Parenting Plans
§ 10:3	Social Context: High Conflict Cases, Family Violence & Alienation
§ 10:4	The Historical Context: Custody, Access and “Best Interests”
§ 10:5	The 2021 Reforms
§ 10:6	Role of the Lawyers—statutory and ethical duties
§ 10:7	Role of the Courts—a more inquisitorial role for family court judges
§ 10:8	The challenges of settling parenting cases
§ 10:9	Avoiding Litigation—Information Programs
§ 10:10	—Mediation
§ 10:11	—Arbitration
§ 10:12	—Parenting Coordination
§ 10:13	Information About Child and Parents—Office of the Children’s Lawyer
§ 10:14	—Assessments Under <i>CLRA</i> s. 30
§ 10:15	Children Are Individuals
§ 10:16	The Parenting Plan Guide
§ 10:17	Continuity & Stability: Temporary Care & the Status Quo
§ 10:18	The “Tender Years” Doctrine Rejected

- § 10:19 New Partners
- § 10:20 Separation of Siblings
- § 10:21 Past Marital Misconduct
- § 10:22 Family Violence
- § 10:23 Family Violence & the 2021 Amendments
- § 10:24 Shared Parenting: Introduction and Social Science Research
- § 10:25 “Maximum Contact” and Shared Custody
- § 10:26 Barendregt and the End of the “Maximum Contact Principle”
- § 10:27 Interim Shared Parenting Time
- § 10:28 Shared Parenting as Response to Marginalization
- § 10:29 Shared Decision-making Responsibility
- § 10:30 Shared Parenting and Child Support: “The Elephant in the Room”
- § 10:31 Blood Ties
- § 10:32 Race, culture, heritage and Indigeneity
- § 10:33 Views & Preferences of the Child—Children have a right to be heard
- § 10:34 The Appointment of the Children’s Lawyer
- § 10:35 The Role of the Children’s Lawyer
- § 10:36 —*Ludwig v Ludwig*
- § 10:37 “Presumption of Access”
- § 10:38 Suspension or Supervision of Parenting Time
- § 10:39 Grandparents & Contact Orders
- § 10:40 Children Resisting Contact & Parental Alienation
- § 10:41 Contempt of Court
- § 10:42 Interim Enforcement—*Brazeau v LeJambe*
- § 10:43 Responding to Parental Alienation—“Custody Reversal”
- § 10:44 Variation of Parenting Orders
- § 10:45 Relocation: Introduction and Social Context
- § 10:46 Statutory Reforms Governing Relocation
- § 10:47 International Removal of Children
- § 10:48 The *Hague Convention*
- § 10:49 The *Hague Convention* Process
- § 10:50 Child’s Habitual Residence
- § 10:51 Exceptions to Mandatory Return
- § 10:52 International Removal of Children and Non-Hague Countries

CHAPTER 11. DOMESTIC AGREEMENTS

- § 11:1 Kinds of Domestic Agreements
- § 11:2 Cohabitation and Marriage Agreements
- § 11:3 Separation agreements
- § 11:4 Legislation Governing Domestic Agreements
- § 11:5 Parenting and Child Support Provisions in Domestic Contracts
- § 11:6 —Cohabitation and Marriage Agreements—Dealing with the Matrimonial Home
- § 11:7 Permissible Content—Separation Agreements
- § 11:8 Legislation Governing Validity of Domestic Agreements

TABLE OF CONTENTS

§ 11:9	Child Related Provisions in Domestic Agreements
§ 11:10	Overriding Spousal Support Provisions
§ 11:11	Private Ordering Versus Public Interest
§ 11:12	The Value of “Average Justice”
§ 11:13	The Value of Negotiation for Parenting Issues
§ 11:14	The Judicial Preference for Private ordering— <i>Hartshorne v. Hartshorne</i>
§ 11:15	Problems with Private Ordering—Emotions and Abuse
§ 11:16	Domestic Agreements and Culture and Religion
§ 11:17	Formation of Domestic Agreements
§ 11:18	Formality Requirements— <i>FLA</i> s. 55(1)
§ 11:19	Setting Aside Domestic Contracts—Ontario <i>Family Law Act</i> s 56(4)
§ 11:20	Failure to Disclose—s. 56(4)(a)
§ 11:21	Failure to Disclose—Judicial Discretion
§ 11:22	Failure to Understand Nature or Consequences—s. 56(4)(b)
§ 11:23	Otherwise in Accordance with the Law of Contract—s. 56(4)(c)
§ 11:24	Overriding Spousal Support Releases in an Agreement
§ 11:25	Commentary On Spousal Support Agreements and Releases
§ 11:26	Varying Parenting Provisions in an Agreement
§ 11:27	Varying Child Support

Table of Cases