Family Law Quiz Review

Yellow is important
Purple you can ignore
White is fair game

Family Law Pt. 1

Family law covers the relationships among family members: spouses, parents, children, grandchildren and stepparents. As you would suspect, the primary sources of family law are federal and provincial statutes (laws).

In this unit we will canvas the following topics of family law:

- **Marriage and divorce;**

http://www.dailymail.co.uk/tvshowbiz/article-2755715/Austrian-octogenarian-billionaire-Richard-Lugner-called-Kim-Kardashian-annoying-true-love-24-year-old-Playboy-model.html

http://www.dailymail.co.uk/news/article-3986050/Billionaire-Richard-Lugner-84-famous-paying-famous-women-dance-Vienna-divorces-26-year-old-Playboy-bunny-wife-two-years-marriage.html

- **Children;**

https://www.theguardian.com/world/2008/jan/04/usa.musicnews

http://www.mtv.com/news/1635968/nas-ordered-to-pay-kelis-350k-plus-in-spousal-child-support/

http://www.dailymail.co.uk/tvshowbiz/article-5374207/Kelis-requests-Nas-raise-8K-monthly-child-support-son.html

- **Division of family property and support; and**

http://www.dailymail.co.uk/tvshowbiz/article-2078268/Mel-Gibsons-loses-half-estimated-850-million-divorce-settlement-ex-wife-Robyn-Moore.html

- **The law and reproduction**

http://www.dailymail.co.uk/news/article-4008338/Sofia-Vergara-sued-embryos-ex-fiance-Nick-Loeb-continues-legal-battle.html

http://www.dailymail.co.uk/news/article-4825122/Judge-dismisses-embryo-suit-against-Sofia-Vergara.html

Marriage
Does federal or provincial law govern marriage? Actually, both.

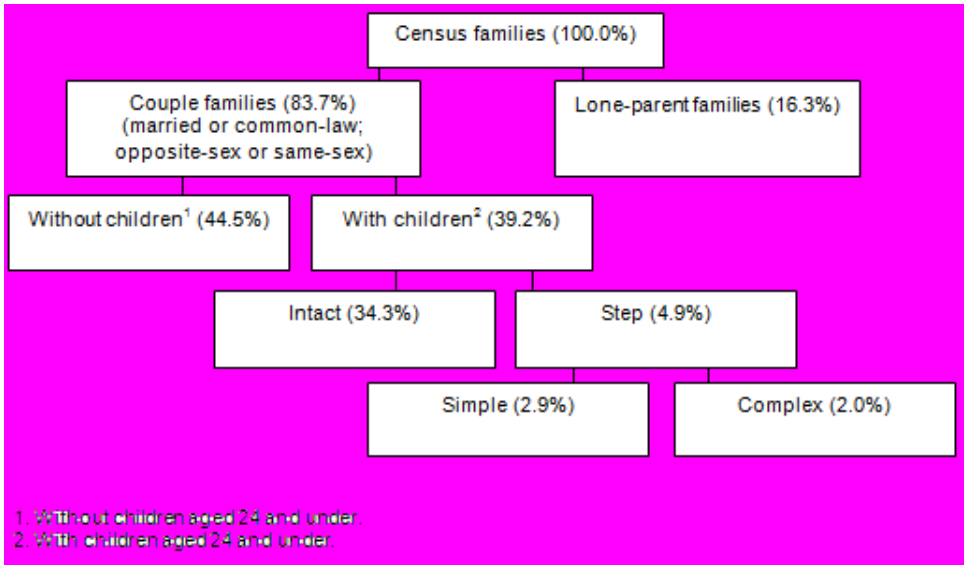
Federal Power – under section **91 (26)** of *The Constitution Act* (1867), federal government has exclusive jurisdiction over the essentials of marriage and divorce. Thus, it is the federal government that can define a marriage – not the provinces. **Why has this become such an issue lately?**

These are know as the **essential requirements** – Federal laws that deal with an individual's legal and personal capacity to marry. These requirements apply to all Canadians, regardless of where they live.

Provincial Power (Formal Requirements) – under section **92 (12)** of *The Constitution Act* (1867), the provincial governments have jurisdiction over the ***solemnization of marriage*** – in other words, the formal requirements of a marriage ceremony.

Section 92 (13) also gives the provinces the authority to enact laws dealing with property and civil rights – this section applies to child support, adoption and the division of property when a marriage ends.

Family Structure in Canada
One of the problems in defining what constitutes a family is that there is no single dominant structure found in today's society. For illustrative purposes, the following chart shows Statistics C
Canada's 2011 data for private households and reveals some interesting trends:



http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil01-eng.htm

http://www.statcan.gc.ca/pub/91-209-x/2013001/article/11788-eng.htm

http://www.statcan.gc.ca/pub/91-209-x/2013001/article/11788/fig/fig1-eng.htm

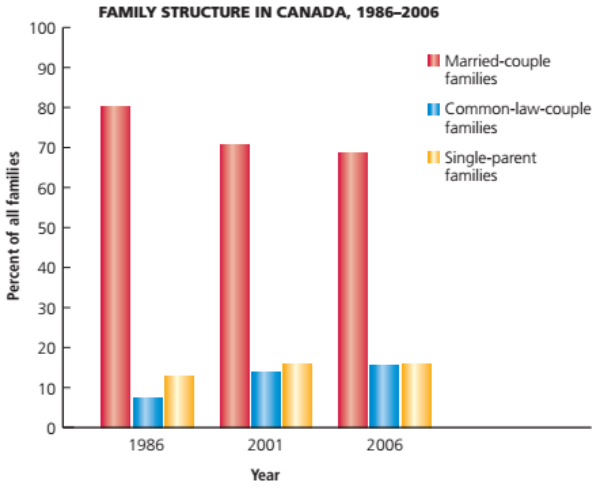
Marriage

While the above statistics show that alternative family formats are becoming quite common in Canada, most Canadians will marry at least once in their lives. Additionally, even though it is estimated that almost 30% of Canadian marriages will end in divorce, 75% of all divorced men and women will marry again or live in a common-law relationship.

https://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil02-eng.htm

What is Marriage?

Marriage is a ***legally binding contract*** between two people (most recently amended by the last Liberal government to included two people of the same gender) provided certain requirements are met. As with any contract, each party has obligations and rights. There is only two ways this contract can end: death or divorce.



Common-law Marriage/Cohabitation (Legal Term)

While we have all heard that common-law relationships (or marriages) are a rather recent development, they are, in fact, quite old. Up until the mid 1700s, it was common for people in Britain to unite in common-law marriages rather than formal religious ceremonies. All the couple had to do was agree to live together, begin living as husband and wife and once sexual intercourse occurred, they were validly married. Of course, the Church of England didn't really like these marriages and the *Marriage Act* of 1753 outlawed common-law marriages.

Today we have come full circle and by living as spouses for a set period of time (one to two years – **under the *Family Law Act* of BC the time period is two years**), couples will be deemed by the law to be common-law with many of the same rights and responsibilities of those who enter into formal marriages.

Spouses and relationships between spouses

3 (1) A person is a spouse for the purposes of this Act if the person

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship, and

(i) has done so for a continuous period of at least 2 years, or

(3) A relationship between spouses begins on the earlier of the following:

(a) the date on which they began to live together in a marriage-like relationship;

(b) the date of their marriage.

Why were Cohabitation/Common-Law Relationships created?

Change from unmarried partners not having any legal responsibilities to financially support each other. Meaning there was no legal obligation to divide assets or property equitably if the relationship ended. Often this would leave one partner, usually the woman, with no right to property or home if the relationship terminated. Further, lawmakers want to keep pace with social attitudes and practices regarding unmarried couples who cohabitate.

So, laws were implemented that recognized cohabitants as spouses after a certain period of time. Being recognized as a spouse allows for certain rights and obligations under federal and provincial law, such as financial support if the relationship ends and it is required. However, there is a child involved length or seriousness of relationship does not matter. Both parents are legally responsible for supporting the child.

While cohabiting partners have gained many of the benefits that married couples receive automatically, under current legislation their legal status is not the same as that of married spouses. Only through living together for a set period, signing a legal contract, or registering their partnership in some provinces such as Nova Scotia, can cohabitants acquire such rights and obligations.

Contracts:
Domestic Contract – a legal agreement that defines rights and obligations of married or cohabiting partners.
Cohabitation Agreement – a domestic contract that sets out the rights and obligations of both partners.
Marriage Contract – a domestic contract that deals with specific aspects of the marriage including the division of property in the event of a divorce, separation, or death.

Requirements of Marriage
As we discussed above, the federal government has jurisdiction over the essential elements of marriage. Unfortunately the federal government has passed little statute law and, as a result, the provinces have covered this omission through their own *Marriage Acts*. If any of the following elements are missing at the time of marriage, the marriage contract is void.

1. **Capacity** – in order to marry you must have the mental and legal ability to marry. People who are drunk, ill or on drugs (to the point that they can't understand what they are doing) cannot legally marry. At the time of the marriage both parties must be able to understand not only the nature of the marriage, but also the duties and responsibilities that result from marriage.

Case
Re McGill (1979) Alberta Court of Queen's Bench
An elderly woman, Norah McGill, was diagnosed with multiple sclerosis in 1939. Over the years her condition deteriorated and she stayed in bed or in a wheelchair most of the time. McGill developed a close friendship with David Peal, an 80-year-old man with whom she lived and who had cared for her for five years. When the couple announced that they wished to marry, McGill's two sisters obtained an injunction to stop the marriage. They also applied to the court for an order confining their sister to a hospital or nursing home.

Medical evidence was presented that suggested that McGill was not able to conduct her own affairs or make a decision as to her marital status. Evidence was also given that she required nursing care 24 hours a day, either in an institution or at home. This evidence was strongly supported by the two sisters. McGill's personal physician for many years giving opposing evidence that the marriage to Paul was important to her psychological welfare and that Peal could care for her properly. The doctor further stated that, in his

opinion, McGill understood and appreciated the nature of the marriage. His evidence was supported by testimony from David Peal. McGill applied to the court to have the injunction removed and the application for her confinement dismissed.

Question: Why do you think the two sisters acted to prevent the marriage?
Question: What do you think the court's response was to McGill's action to dismiss the injunction?

2. **Minimum Age** – the federal government has not established any minimum ages for marriage through statute, though it has adopted the old English common law rule: **14 years for males and 12 for females.** Each province, however, has passed its own age requirements. Generally there are two different ages set: One for the minimum age without parental consent and one for parental consent.

Province	**Age without Parental Consent**	**Age with Parental Consent**
BC	**19**	**16**
Quebec	18	14 Male 12 Female

In addition to the above age guidelines, ***it is also possible for a person to marry at a younger age with a court order.*** In such cases the court must be satisfied that it is in the best interests of the young person – usually these are limited to where the woman is pregnant.

3. **Close Relationships** – can you marry your first cousin? Yes. That being said, when the two people are two closely related by blood (consanguinity), marriage (affinity) or adoption the law may restrict the right to marry. In Canada, the *Marriage (Prohibited Degrees) Act* of 1990 prevents the following marriages:

A man may not marry his…	**A woman may not marry her…**
Grandmother	Grandfather
Mother	Father
Daughter	Son
Sister	Brother
Granddaughter	Grandson

Note: The above now applies to same-sex couples – i.e. a woman cannot marry her mother, grandmother etc.

4. **Genuine Consent** – obviously for any contract to be valid there must be consent. In the case of marriage, lack of consent may result from either **mistake** or **duress**.
    a. **Mistake** – refers to (1) mistaken identity of one of the parties due to the fact that the person had their face covered or, I know it is hard to believe, they are an identical twin. (2) Mistaken belief as to the nature of the ceremony as when one party does not speak the language and believes that the ceremony is for something other than a marriage. Mistake or misrepresentation by one party as to their health, wealth, religion or age

does not constitute mistake for the purposes of having the wedding annulled (declared void).

b. **Duress** – occurs when one person marries another out of fear for their life, health or freedom. It does not require physical force be used or threatened. The most common situation occurs when a young pregnant girl is pressured by her parents to marry the baby's father.

Family Law Pt. 2

Prior Marriages

In Canada, it is illegal for a person to enter into a second marriage while still being married. This is known as **bigamy**, a form of **polygamy**, and constitutes a *Criminal Code* offence liable to up to five years in prison.

Thus, if you have been previously married, you must present proof of divorce, annulment, or death before you can legally marry. In cases where people do marry a second time (and are still married to their first spouse), ***the second marriage would be legally void.***

Disappearance of a Spouse

In the event that a spouse disappears and cannot be found for a long period of time, an application may be made to the court for a "presumption of death" certificate.

> **Ex.** In Ontario the default waiting period before applying for a PoD certificate is seven years.

In special circumstances the court may waive the mandatory waiting period (ex. shipwreck, plane crash, or any situation making the recovery of bodies unlikely). However, if a legally presumed spouse is actually alive and returns after the surviving spouse has remarried, the second marriage would be declared void.

Sexual Capacity

Traditionally, a heterosexual *sexual* relationship was regarded as the foundation of marriage. Therefore, the ability to **consummate** the marriage became an essential requirement.

If either party in a marriage lacks sexual capacity, i.e. the ability to consummate the marriage, the marriage may be annulled. The inability to have sexual intercourse must result from a physical or psychological problem. Further, absence of sexual capacity must exist prior to consummation.

> **Ex.** A man is injured after the wedding and is rendered impotent. Sexual capacity could not be a reason for annulment if the marriage had already been consummated.

Formal Requirements for Marriage
Each province passes its own legislation in the form of marriage acts to clarify and fill in any gaps regarding marriage under common law. These formal requirements can vary from province to province.

1. **Marriage Licenses & Banns of Marriage**
    - A **marriage license** is a legal document authorizing the marriage of the applicants. It can be purchased wherever its sale is authorized by the province's marriage act.
        Ex. Saskatchewan – jewelry stores, town administration centres
        Ex. **Ontario** – municipal government offices
        Ex. **British Columbia –** London Drugs (in some communities). Seriously.
    - In some provinces, marriage applicants may instead opt to have **banns of marriage** proclaimed at a religious ceremony. A clergy member announces to the congregation the couple's intention to marry by proclaiming the banns on a regular day of worship. The number of times the banns are read vary depending on the practice of individual churches. The couple may marry five days following the last reading of the banns.
2. **Marriage Ceremony**
    - Depending on the wishes of the couple, the trappings of a marriage ceremony may take many forms. However, basic criteria must be met for the ceremony to be considered valid.
        1) The marriage must be witnessed by *at least* two people 18 years of age or older.
        2) The ceremony must be conducted by someone who is authorized by law to do so. This person can be a member of a religious organization in the case of a religious ceremony, or a judge, Justice of the Peace, or marriage commissioner in the case of a civil marriage.
        3) The couple must solemnly declare that they know of no legal reason why they may not marry.
            a. That they will take each other to be their lawfully wedded spouse
            b. The person conducting the ceremony must pronounce them husband and wife.

Aboriginal Customs
Federal and provincial laws relating to marriage and divorce apply to Aboriginal peoples. In addition, courts recognize **custom marriages**, Aboriginal ceremonies that follow established cultural practices. Divorces based on Aboriginal customs have also been recognized by the courts.

After the Wedding – Changing Names
Though tradition dictates women adopt the surname of their spouse, there is no legal obligation in Canada for women to follow this custom. In fact, at no point in Canadian history was this tradition made mandatory by law.

Options Available:

1. Retain previous surname (Maiden name)
2. Adopt their spouse's surname
3. Hyphenate both names

When a child is born to a married couple, the child is usually given the husband's surname or the hyphenated name of both parents. *If both parents consent, the child may receive the mother's surname*. In cases of dispute, the child receives both names in alphabetical order.

Where the mother is unmarried, the child is given the mother's surname or the father's surname (if he consents or paternity is proven).

Cohabitation & Common-Law Relationships

A **common-law relationship** refers to an intimate relationship between two people who are not legally married. The term "common-law" is somewhat misleading because there are actually no rights or obligations in common law to protect a couple living together. A more accurate term is **cohabitation**, which is the term used in most legal documents to describe any partners who live together in an intimate relationship, whether they are married or not. ***Rights and obligations only arise after they have cohabited for a certain period of time.***

Lawmakers in Canada have tried to keep pace with social attitudes and practices regarding unmarried couples who cohabit, so all provinces and territories have enacted family legislation that recognizes cohabitants as "spouses" under certain circumstances.

Being recognized as a spouse carries certain rights under federal and provincial law:

Examples of spousal privilege

1. right to visit your spouse in the hospital without the interference of blood relatives;
2. right to make medical decisions for the other spouse without interference from other blood relatives;
3. right to adopt as a couple rather than as individuals;
4. right to the other spouse's pension benefits and medical, drug and dental plans;
5. right to inherit from spouse in cases where there is no will;
6. right to custody of children of couple or from previous relationships;
7. right to certain *Income Tax Act* deductions

British Columbia – *Family Law Act*, 2013.

According to this act, common-law couples who cohabit for two years are considered spouses and are therefore entitled to the same rights and responsibilities as married couples.

Article:

http://www.cbc.ca/news/canada/british-columbia/common-law-couples-as-good-as-married-in-b-c-1.1413551

Redefining Marriage – *Civil Marriage Act*, 2005.
In July 2002, the Ontario Superior Court of Justice ruled that the common-law definition of marriage as being between a man and a woman was an unjustifiable infringement of s.15 of the *Charter*. The ruling was subsequently upheld by the Ontario Court of Appeal. The Court gave a revised definition of marriage as being the "voluntary union for life of two persons."

In 2005, after similar rulings appeared across the provinces, the federal government introduced Bill C-38 in Parliament. It was passed and the *Civil Marriage Act* received royal assent on July 20, 2005. Same-sex marriages were then legal everywhere in Canada.

The *Civil Marriage Act* does not force religious institutions to provide marriage ceremonies for same-sex couples, based on the *Charter's* s.2 guarantee of freedom of religion.

Termination of Marriage: Death, Annulment, Separation
As marriage represents a legally binding contract, the question must be asked – how is marriage terminated? There are several ways:

> **Death –** the death of either spouse ends a marriage. Hence "…till death do us part."

Annulment – a court order stating that two spouses were never legally married. Generally, annulments occur where marriages have lasted only a very short time. The grounds for annulment are very limited and must have existed at the time the marriage took place. They include:

- A lack of genuine consent
- Defect in the marriage ceremony (ex. the priest wasn't a real priest, or the official was unlicensed)
- Unable to consummate the marriage (simply refusing to do so does not count)

In addition to legal annulment, the Roman Catholic, Jewish, and Islamic faiths also dispense religious annulments that allow the person granted the annulment to remarry within their faith. These annulments have no legal effect and the person must also obtain a legal annulment or divorce before they can legally remarry.

Separation – is supposedly an intermediate step between marriage and divorce. Separation means that the spouses decide to live separate and apart. Sometimes couples stop at this point and live for the rest of their lives this way – possibly because the spouses belong to a faith that does not believe in divorce.

> **What does "separate and apart" actually mean?**
> Usually is means that they live in separate locations and they do not intend to live together again.

One can, however, be separated and living in the same house as the other spouse as long as they sleep in different rooms and lead a separate life.

Separation Agreements
While there is no formal requirement that the spouses enter into a formal written agreement at the time of their separation, most do. Separation agreements are simply written contracts that will govern important aspects of each spouse's life following the separation. Common areas covered are:

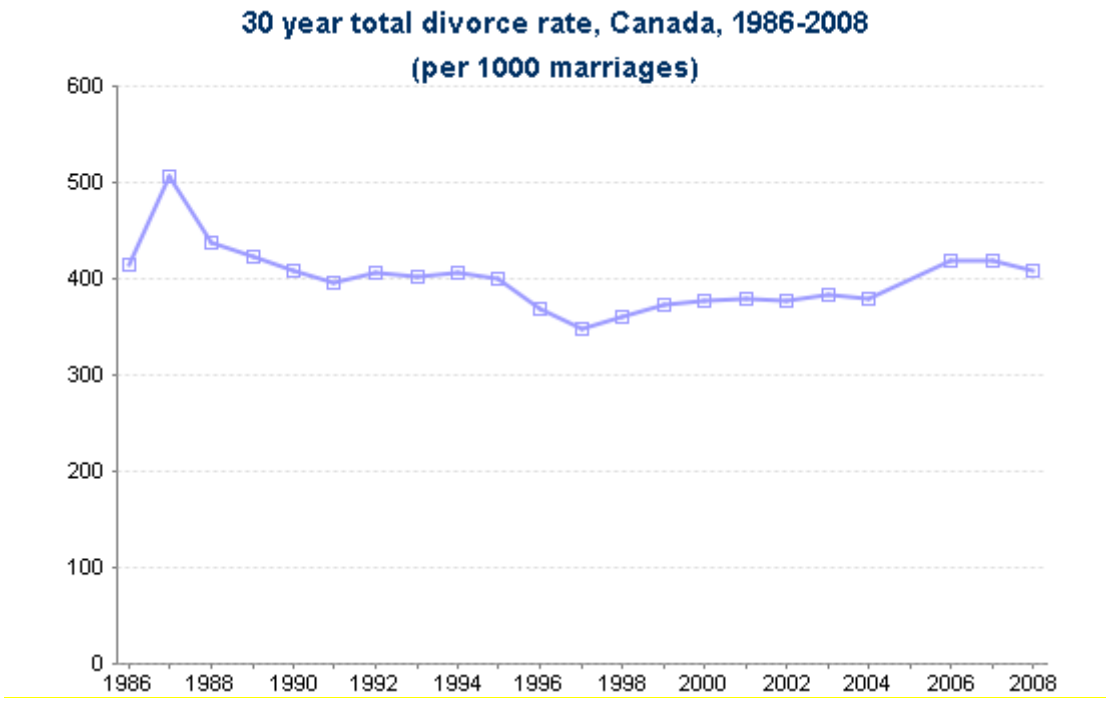
1. Ownership and occupation of the family home;
2. Spousal support, if any;
3. Child support;
4. Child custody;
5. Visitation rights;
6. Other property.

Separation agreements are usually written with the help of lawyers and once witnessed become legally enforceable contracts in the case one party violates the agreement.

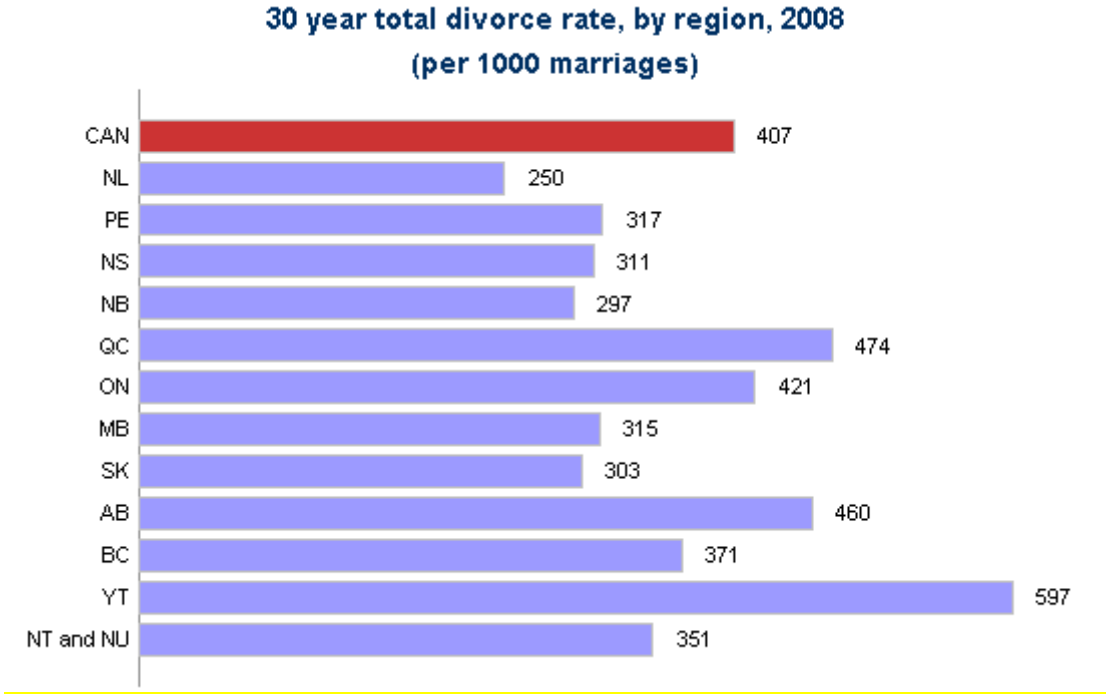
Finally, **it is important to note that separation agreements do not allow either party to remarry** (that would be bigamy) **or to engage in sexual relations with another party** (that would be adultery).

Family Law Pt. 3

Divorce – is the legal procedure that ends a valid marriage. Divorce is becoming more and more common in Canada. Currently, Statistics Canada estimates up to 35 - 40% of all marriages will end in divorce.



The risk of divorce tends to be the highest in the first four years of marriage and declines slowly after that point. While the overall rate of divorce in Canada is quite high, it varies greatly from province to province. Divorce rates are lowest in Newfoundland (25%) and highest in Yukon (59.7%).



Many observers believe that divorce rates have peaked as the stigma of living together without marrying has declined (Quebec has the lowest marriage rates) and as world events create an atmosphere where people seek greater security in their personal lives.

http://info.legalzoom.com/philippine-laws-divorce-separation-annulment-20694.html

Divorce Procedure

Sue for Divorce – all actions for divorce begin with a "Statement of Claim" like any other civil lawsuit stating the grounds for the divorce and any other essential information.

Divorces are heard in the superior courts of each province (**BC Supreme Court**) and are usually settled before trial. ***A divorce becomes final 31 days after the judgment*** is given and any party may remarry by paying for a **Certificate of Divorce** from the court. The waiting period serves two purposes:

1. Allow the spouses one last chance to reconcile before the divorce becomes final; and
2. Allow for an appeal of the court's decision.

History of Divorce in Canada

Under s. 91 of *The Constitution Act* (1867) the federal government has exclusive jurisdiction over divorce in Canada. Unfortunately, up until 1968 the federal government did not pass a law regulating divorce. As a result, the provinces each had their own rules. Most provinces followed the English law, but Newfoundland and Quebec (with large Roman Catholic influences) only allowed divorces where a federal act was passed specifically allowing the divorce. Finally in 1968, the federal government passed the first *Divorce Act* that applied to all the provinces and territories. **Under the 1968 *Act*, divorce was granted for two main causes: matrimonial fault or blame and marriage breakdown.** Within these categories were 15 specific grounds including adultery, mental

or physical cruelty, bigamy, homosexuality, addiction to drugs or alcohol, imprisonment and desertion. In each case the person seeking the divorce had to prove the fault of the other party. Marriage breakdown could be proved by a separation period of at least three years.
The *Act* also required the lawyers and judges to attempt reconciliation – encourage the spouses to try and make the marriage work.

***The Divorce Act*, 1985**

The new act was an attempt to simplify divorce and reduce the number of grounds for divorce. **Under the current law, the only ground for divorce is marriage breakdown.** This is known as no-fault divorce. The following conditions constitute marriage breakdown:

1. The spouses have separated for at least one year and were living apart when the divorce petition was filed;
2. The respondent committed adultery (you can't get divorced for your own adultery!); or
3. The respondent treated his or her spouse with such serious physical or mental cruelty that it is impossible for them to live together.

CHILDREN

In this section we examine the several issues revolving around children within the family. They include:

- Custody
- Access and Mobility Rights
- Child Support
    - http://www.justice.gc.ca/eng/fl-df/child-enfant/2017/look-rech.asp
- Child Abuse
- Adoption

Custody

In cases where couples separate or divorce there is the fundamental question as to with whom should the children live (custody). While historically mothers have been granted custody, the law has evolved to the point that the overlying rule is that courts must look at what is in the ***"best interests of the child."*** As a result, what a particular parent wants, their lifestyle or conduct (unless there is abuse or violence) is not a factor in and of itself. The only remaining question is – ***How do the courts determine what is in the best interests of the child?***

Note: Unlike the divorce itself, ***custody orders are never final*** – they can be revisited at any time by the court to ensure that changing circumstances are addressed so that the best interests of the child are always considered.

Below are some (this is not an exhaustive list) of the "Tests" used by the courts to determine what is in the best interests of the child:

1. Stability of Home Environment – the courts have acknowledged that divorce and separation are periods of great stress and turmoil for children. As such, the courts seek to reduce stress through providing a steady and stable routine for the children. Thus, this often means that if one spouse has traditionally looked after the children (the ***primary caregiver***), custody will be awarded to that spouse. Factors such as:

- Who attended to the child's educational, cultural and religious development;
- Who took the child to medical appointments;
- Who prepared the child's meals;
- Who bought the child's clothing; and
- Who looked after the child after school,

are all important in determining who should be granted custody. It is also important to note that a court will often award ***interim custody*** (temporary) to one parent until arrangements with the divorce/separation are finalized and that the parent that is awarded interim custody is usually the same one awarded ***final custody***.

2. Separation of Siblings – generally courts do not like to separate siblings (brothers and sisters) when awarding custody. It is assumed that remaining together during this period is helpful to the children. While this is a general rule, courts will separate siblings where there are difficulties between them (when isn't there!), if their ages are far apart, or if there are other factors that point to it being in the best interests of each child to be with different parents. Often courts have awarded mothers the custody of girls and younger children, while fathers may get the custody of boys or older children.

Case

Poole v. Poole (1999) BC Court of Appeal

Arthur and Christine Poole married in July 1978 at a young age. When the case went to court, Arthur was 41 and Christine was 39. They had four children – three sons aged 18, 16, and 13; and a daughter, Samantha, aged 6. After almost 17 years of marriage, the Pooles separated in March 1995 and the mother and the four children left the family farm. Within days, however, the three boys returned to the farm and remained there.

Since 1987, the father had operated a farm with his brother outside of Vanderhoof, BC. In addition to attending school, the boys assisted with the farm. They were also involved in 4-H. When the mother left the farm, she moved into an apartment in Vanderhoof and remained there with Samantha. The two became established in the neighbourhood and Samantha attended local school.

In 1998, the BC Supreme Court granted the Pooles a divorce, divided the family assets, and awarded custody of the daughter to the father. Custody of the three sons had already been granted to the father with the mother's consent. The mother appealed the custody order in relation to Samantha.

Question: Should the Court of Appeal vary Samantha's custody order?

3. **Children's Preferences and Wishes** – more and more the courts are willing to consider the wishes of the children in determining custody. While the wishes of children from 8 to 13 are considered, those of older children (14 and over) are taken very seriously. Generally, the older the child, the greater influence of their wishes on the court's decision. (For one thing, the court recognizes that older children who do not wish to stay with the custodial parent will probably just leave).

4. **Parental Conduct** – usually the court does not take into account a person's past conduct in determining custody unless that conduct is relevant to that person's ability to act as a parent in the future. Thus, if one parent has committed adultery or has an unusual lifestyle, that will not be sufficient to determine the custody issue. On the other hand, where drug or alcohol abuse, violence or rage would be major factors in determining custody. In recent years the question of a parent's sexuality has been raised during custody hearings. While a homosexual parent may have more difficulty in obtaining custody than a heterosexual parent, gay and lesbian parents have been granted custody of their children. The question most courts consider is how the parent handles his/her sexuality and its potential influence on the child's life.

5. **Religion** – the old used to be that the custodial parent (the one with whom the child lives) has the right to make decisions in regard to the religious upbringing of the child. Nowadays courts believe that both parents should have input and generally require that both parents have input and refrain from ridiculing the other parent's religion. As with all custody cases, the best interests of the child is foremost in the minds of the court.

6. **Tender-Years Principle** – it used to be that the courts felt that younger children always benefited from being with their mothers. This rule applied up until about the age of six. While there is still a tendency to award younger children to mothers, the courts acknowledge that both parents have a right to custody and that it is always what is in the best interests of the child that should determine custody.

Forms of Custody

Sole Custody – is where only one parent has custody of the child and makes all the important decisions in regard to their wellbeing. Sole custody is rarely awarded unless there are serious allegations of abuse or endangerment.

Joint Custody or Shared Parenting – is a situation where both parents have a shared responsibility for the children. There are two types of joint custody:

1. **Joint physical custody** – where the child spends equal or nearly equal time with both parents and both parents make the major decisions. While this option seems preferable because it allows the child to make substantial connections with both parents, in reality it can be difficult given the practical matters that arise when a child lives in two different locations.
2. **Joint legal custody** – is more common and where the child has a primary home with one parent but the other parent has very liberal access. Despite the child living primarily in one home, both parents have the right to make the major decisions.

Access and Mobility Rights

When one parent has been granted custody, the courts usually award access to the other parent. Access may also be sought by non-parents (grandparents usually) and allows the person to have visits with the child. Usually access allows the non-custodial parent to spend time on the weekends, special occasions, receive information in regard to the child's health and progress in school and to be notified in regard to any intended move by the custodial parent.

Where a judge feels that a child's well-being is threatened by the access of a parent, he/she may order access to be severely limited or deny it entirely – the latter option, however, is rare.

Types of Access – there are three major types of access:

1. **Reasonable access** – is where the non-custodial parent is granted generous amounts of time with the child, is flexible and regular.
2. **Specified access** – involves precise times that the non-custodial parent is allowed access. This may be after school, holidays or other specified days. This is more common where the two spouses have a very poor, combative relationship after the divorce.
3. **Supervised access** – is also for a set period of time but also requires the non-custodial parent to visit only while supervised by another person such as a relative or social worker. This usually occurs where the parent has a history of violent or abusive behaviour or where there is a worry the parent may remove the child.

Mobility Rights – often one spouse (the spouse with custody) wishes to relocate to another city, province or country. Obviously, in many circumstances such relocation will serve to terminate the non-custodial parent's access rights. The question becomes does the custodial parent have the right to remove the child? While each case is treated individually the general rule is that the custodial parent can remove the children if the move is reasonable and in the best interests of the children. If the non-custodial parent asks the court to prevent the move, the custodial parent will have to prove that the move is in the best interests of the child. When considering this question the courts have often decided that what is good for the custodial parent is also good for the child.

Case:
Gordon v. Goertz (1996) Supreme Court of Canada
Robin Goertz and Janet Gordon lived in Saskatoon until their separation in 1990. Under their mediated agreement, the parents agreed that their daughter, Samantha, would reside with each of them on a rotating basis, and that if one party moved, the child would remain in Saskatoon with the other. In 1993, the mother petitioned for divorce and was granted permanent custody of seven-year-old Samantha, while the father was granted generous access. Both parents enjoyed a warm and loving relationship with Samantha, and the father saw the child frequently.

In 1994, when the father learned that the mother planned to move to Australia to study dentistry, he applied for custody of the child, or an injunction preventing the mother from moving from Saskatoon. The mother cross-applied to allow her to move to Australia with Samantha.

Relying heavily on the divorce judgment, the trial level judge dismissed the father's application. The judge varied the access order, allowing the mother to move while granting the father generous access on one-month's notice to visit in Australia. The mother and Samantha move in early 1995.

The father further appealed to the Saskatchewan Court of Appeal, but that appeal was dismissed. The father then appealed to the Supreme Court of Canada. Because of the time involved in the hearings, the mother and daughter had been already living in Australia for over a year before the Court ruled.

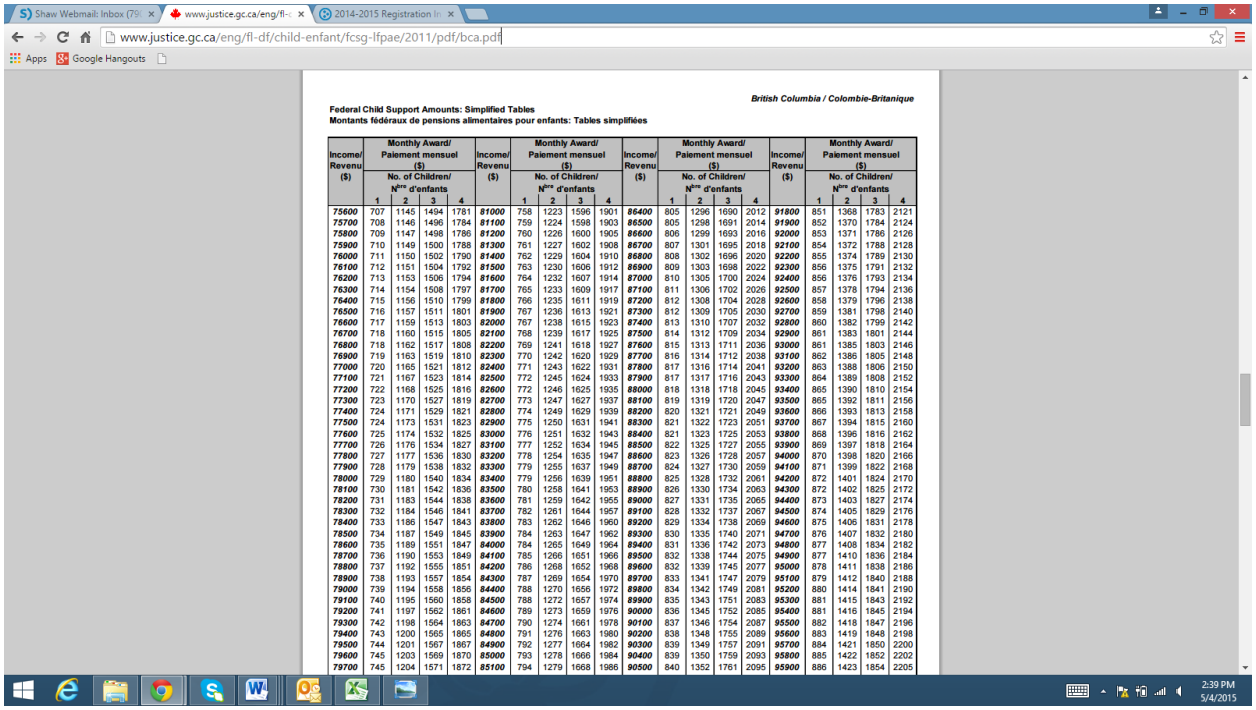
Question: What should the court decide? Why?

Family Law Pt. 4

Child Support
Federal Child Support Guidelines
In 1997, the federal government introduced new guidelines setting out the appropriate level of child support in cases of divorce. The purpose was to remove the conflict that naturally arose in child support cases. Now the level of support is based on:

1. **Which province or territory the non-custodial parent lives in;**
2. **The non-custodial parent's income; and**
3. **The number of children.**

As a result, there are now charts establishing the monthly support a non-custodial parent must pay to the custodial parent. For example, a non-custodial parent with an income of $81,000 with three children living in BC would have to pay $1,596 (based on the 2011 Table given below) to the custodial parent.



British Columbia / Colombie-Britanique

Federal Child Support Amounts: Simplified Tables
Montants fédéraux de pensions alimentaires pour enfants: Tables simplifiées

Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants			
	1	2	3	4		1	2	3	4		1	2	3	4		1	2	3	4
75600	707	1145	1494	1781	**81000**	758	1223	1596	1901	**86400**	805	1296	1690	2012	**91800**	851	1368	1783	2121
75700	708	1146	1496	1784	**81100**	759	1224	1598	1903	**86500**	805	1298	1691	2014	**91900**	852	1370	1784	2124
75800	709	1147	1498	1786	**81200**	760	1226	1600	1905	**86600**	806	1299	1693	2016	**92000**	853	1371	1786	2126
75900	710	1149	1500	1788	**81300**	761	1227	1602	1908	**86700**	807	1301	1695	2018	**92100**	854	1372	1788	2128
76000	711	1150	1502	1790	**81400**	762	1229	1604	1910	**86800**	808	1303	1696	2020	**92200**	855	1374	1789	2130
76100	712	1151	1504	1792	**81500**	763	1230	1606	1912	**86900**	809	1303	1698	2022	**92300**	856	1375	1791	2132
76200	713	1153	1506	1794	**81600**	764	1232	1607	1914	**87000**	810	1305	1700	2024	**92400**	856	1376	1793	2134
76300	714	1154	1508	1797	**81700**	765	1233	1609	1917	**87100**	811	1306	1702	2026	**92500**	857	1378	1794	2136
76400	715	1156	1510	1799	**81800**	766	1235	1611	1919	**87200**	812	1308	1704	2028	**92600**	858	1379	1796	2138
76500	716	1157	1511	1801	**81900**	767	1236	1613	1921	**87300**	812	1309	1705	2030	**92700**	859	1381	1798	2140
76600	717	1159	1513	1803	**82000**	767	1238	1615	1923	**87400**	813	1310	1707	2032	**92800**	860	1382	1799	2142
76700	718	1160	1515	1805	**82100**	768	1239	1617	1925	**87500**	814	1312	1709	2034	**92900**	861	1383	1801	2144
76800	718	1162	1517	1808	**82200**	769	1241	1618	1927	**87600**	815	1313	1711	2036	**93000**	861	1385	1803	2146
76900	719	1163	1519	1810	**82300**	770	1242	1620	1929	**87700**	816	1314	1712	2038	**93100**	862	1386	1805	2148
77000	720	1165	1521	1812	**82400**	771	1243	1622	1931	**87800**	817	1316	1714	2041	**93200**	863	1388	1806	2150
77100	721	1167	1523	1814	**82500**	772	1245	1624	1933	**87900**	817	1317	1716	2043	**93300**	864	1389	1808	2152
77200	722	1168	1525	1816	**82600**	772	1246	1625	1935	**88000**	818	1318	1718	2045	**93400**	865	1390	1810	2154
77300	723	1170	1527	1819	**82700**	773	1247	1627	1937	**88100**	819	1319	1720	2047	**93500**	865	1392	1811	2156
77400	724	1171	1529	1821	**82800**	774	1249	1629	1939	**88200**	820	1321	1721	2049	**93600**	866	1393	1813	2158
77500	724	1173	1531	1823	**82900**	775	1250	1631	1941	**88300**	821	1322	1723	2051	**93700**	867	1394	1815	2160
77600	725	1174	1532	1825	**83000**	776	1251	1632	1943	**88400**	821	1323	1725	2053	**93800**	868	1396	1816	2162
77700	726	1176	1534	1827	**83100**	777	1252	1634	1945	**88500**	822	1325	1727	2055	**93900**	869	1397	1818	2164
77800	727	1177	1536	1830	**83200**	778	1254	1635	1947	**88600**	823	1326	1728	2057	**94000**	870	1398	1820	2166
77900	728	1179	1538	1832	**83300**	779	1255	1637	1949	**88700**	824	1327	1730	2059	**94100**	871	1399	1822	2168
78000	729	1180	1540	1834	**83400**	779	1256	1639	1951	**88800**	825	1328	1732	2061	**94200**	872	1401	1824	2170
78100	730	1181	1542	1836	**83500**	780	1258	1641	1953	**88900**	826	1330	1734	2063	**94300**	872	1402	1825	2172
78200	731	1183	1544	1838	**83600**	781	1259	1642	1955	**89000**	827	1331	1735	2065	**94400**	873	1403	1827	2174
78300	732	1184	1546	1841	**83700**	782	1261	1644	1957	**89100**	828	1332	1737	2067	**94500**	874	1405	1829	2176
78400	733	1186	1547	1843	**83800**	783	1262	1646	1960	**89200**	829	1334	1738	2069	**94600**	875	1406	1831	2178
78500	734	1187	1549	1845	**83900**	784	1263	1647	1962	**89300**	830	1335	1740	2071	**94700**	876	1407	1832	2180
78600	735	1189	1551	1847	**84000**	784	1265	1649	1964	**89400**	831	1336	1742	2073	**94800**	877	1408	1834	2182
78700	736	1190	1553	1849	**84100**	785	1266	1651	1966	**89500**	832	1338	1744	2075	**94900**	877	1410	1836	2184
78800	737	1192	1555	1851	**84200**	786	1268	1652	1968	**89600**	832	1339	1745	2077	**95000**	878	1411	1838	2186
78900	738	1193	1557	1854	**84300**	787	1269	1654	1970	**89700**	833	1341	1747	2079	**95100**	879	1412	1840	2188
79000	739	1194	1558	1856	**84400**	788	1270	1656	1972	**89800**	834	1342	1749	2081	**95200**	880	1414	1841	2190
79100	740	1195	1560	1858	**84500**	788	1272	1657	1974	**89900**	835	1343	1751	2083	**95300**	881	1415	1843	2192
79200	741	1197	1562	1861	**84600**	789	1273	1659	1976	**90000**	836	1345	1752	2085	**95400**	881	1416	1845	2194
79300	742	1198	1564	1863	**84700**	790	1274	1661	1978	**90100**	837	1346	1754	2087	**95500**	882	1418	1847	2196
79400	743	1200	1565	1865	**84800**	791	1276	1663	1980	**90200**	838	1348	1755	2089	**95600**	883	1419	1848	2198
79500	744	1201	1567	1867	**84900**	792	1277	1664	1982	**90300**	839	1349	1757	2091	**95700**	884	1421	1850	2200
79600	745	1203	1569	1870	**85000**	793	1278	1666	1984	**90400**	839	1350	1759	2093	**95800**	885	1422	1852	2202
79700	745	1204	1571	1872	**85100**	794	1279	1668	1986	**90500**	840	1352	1761	2095	**95900**	886	1423	1854	2205

Courts follow the table closely, but exceptions are made for "special or extraordinary expenses", such as, daycare, medical expenses, some extracurricular activities, private school and post-secondary education. Both parents share these special expenses in proportion with their incomes.

What is not covered by the guidelines?

While it would seem that the guidelines are meant to cover everything, they don't. Courts may also make orders for additional support to cover the following:

- Childcare expenses due to work, school or illness
- Medical and health related expenses over $100 not covered by insurance, including dental
- Extracurricular activities
- Post-secondary expenses

Other exceptions:

- If the table would cause undue (excessive) hardship for the paying parent. Example have to support children in another marriage.
- If the children are 18 or older, the guidelines are a starting point. The court looks at the children's financial needs and their ability to help with their own support. Supporting your children is a life-long responsibility.
- If there is shared or joint custody.
- If the paying parent's annual income is over $150,000, exceptions may be made. The court must first order the table amount for the $150,000. But, the court is then free to order more or less payment, depending on the circumstances.

While the new guidelines have been helpful in removing most conflict, they have caused their own share of controversy. ***In situations where the non-custodial parent has an extremely high income, the amount of support is clearly in excess of what is necessary to raise the child.*** In such cases, the non-custodial parent often feels that the child support truly amounts to spousal support as the custodial spouse also benefits.

Consider the following case:

Case

Francis v. Baker (1999) Supreme Court of Canada

Thomas Baker and Monica Francis were married in 1979. He was a lawyer in a large Toronto law firm and she was a high school teacher. Their first daughter was born in 1983 and their second in 1985. Five days after the birth of the second child, Baker left the family leaving the children with their mother. Since the separation, the mother had been struggling financially and had to return to full-time teaching three months later, contrary to the parties' original plans. Under the terms of the separation agreement, Francis received $30,000 a year in child-support payments and a lump-sum payment of $500,000 to ease her financial problems. The couple divorced in 1987.

In 1988, Francis applied for an increase in child support from $2500 monthly. At trial in 1997 (how many years did it take to get to trial??), Francis changed her claim to support under the Federal Child Support Guidelines. At the time, the mother was earning $63,000 annually. The father had prospered since the separation; he had become the CEO of a large corporation and was earning $945,538 yearly and had an estimated net worth of $78 million. When the daughters were in his care, he took them on European vacations and gave them expensive gifts. As well, he paid $25,000 for the girls' private school education.

Under the guidelines Francis was awarded $10,000 per month in child support. Baker appealed both to the Ontario Court of Appeal and the Supreme Court of Canada.

Question: What did the Supreme Court of Canada decide? Why?

Tax Treatment

Formerly, the spouse making support payments could deduct them from income for the purposes of income tax reporting and the receiving spouse reported them as income. Now, they are neither tax deductible nor included for the purposes of income.

Family Property

Over the past 100 years, marriage has become viewed more and more as an equal partnership. While today this seems self-evident, it was not always so. In fact, it used to be that husbands owned all property (or almost all) and at the time of divorce would walk away with all the property. Today, following a break up, the family property is generally divided equally.

Division of property after a divorce is a provincial matter and in BC the *Family Law Act* governs how the assets are to be divided. Under BC law, all ***family assets (assets acquired during the marriage for the benefit of the marriage) are divided equally***. The definition of family assets under BC law is much wider than under other provinces' legislation and includes such items as pension plans, RRSP's as well as property owned by each spouse before the marriage that is later used by the family (a cabin at Whistler, for example). ***The spouse who owns the assets keeps non-family assets.***

Steps in Calculating Family Property and Equalization Payments

These are the steps to be followed in calculating net family property and determining the amount of an equalization payment.

Step 1 List and calculate the value of your assets on the date of separation.

Step 2 Subtract the value of gifts and inheritances from the value of assets.

Step 3 Subtract your total debts on the date of separation to provide a total property value on the date of separation.

Step 4 List and calculate the value of your assets, less debts, on the date of marriage.

Step 5 Subtract amount #4 from amount #3 to calculate each spouse's net family property.

Step 6 Deduct the lower net family property from the higher one, and divide the difference by two to determine the amount of the equalization payment.

The table below shows how this process could be used for an actual couple, Katya and Callum.

An Example of Division of Property

This example shows the calculation of net family property and how the equalization payment is determined.

Steps in the Process	Callum		Katya
1. Value of assets at separation	$60 000		$300 000
2. Less: Exemption for inheritance received	35 000		0
3. Less: Debts/liabilities at separation	0		100 000
= Total property value at separation	25 000		200 000
4. Less: Value of assets at marriage	5 000		50 000
5. Net family property	20 000		150 000
6. **End result:** Callum deducts his net family property from Katya's net family property and is entitled to one-half the difference. Half of $130 000 equals $65 000.		$150 000 20 000 $130 000 $65 000	

General Rules Used by All Provinces

- The property of the marriage should be divided equally between the spouses unless injustice would result.
- The contribution of the spouse who is primarily responsible for child care and house management should be recognized as it allows the other spouse to acquire non-family property.
- The contribution of each spouse should be recognized whether in the form of money or work, toward the acquisition of property.

Exemptions from the Equal Division Rule

Some situations may necessitate a deviation from the equal division of property rule. For example:

- **Length of marriage** – for very short marriages, it may be unfair to make an equal division as one person may have brought many more assets into the marriage.
- **Length of separation** – if separated for many years it may be unreasonable to include assets acquired for each spouse's personal use during the period of separation.

- **Date when asset acquired** – if something is purchased just before the couple separates, the value may not have to be divided between the two spouses.
- **Gifts and Inheritances** – there is no need generally to include a gift of inheritance if the inheritance is not used to purchase the family home or otherwise ***co-mingled (combined with other family assets – such as deposited into a bank account that has other family money).***

Unequal Division of Property

Every province and territory intends to distribute marital property equally. However, there are situations in which this might be unfair. Consider the situations presented in the following chart.

- **Length of the Marriage:** Quon and Meili have been married for only 18 months, and dividing the value of family assets equally may be unfair to Meili. She brought much more property into the marriage than Quon.
- **Length of the Separation:** Jafar and Birrah separated three years ago. Later, they each bought furnishings for their own accommodations. It would be unfair to divide the value of these assets equally. Both Jafar and Birrah bought them for personal use after they separated.
- **Date When an Asset Was Acquired:** Jamie bought an expensive painting for himself just before separating from Laura. He wishes to keep this asset. If Laura did not have time to appreciate or enjoy the painting in their home, Jamie might not have to divide the value of the art with Laura.
- **Gifts and Inheritances:** Rafaela inherited a valuable family antique from a wealthy uncle while she was married to Luciano. This inheritance may be specifically excluded from equal division. It is unfair to make Rafaela share the value of an antique given to her as an inheritance in a will.

Marriage Contracts – or ***prenuptial agreements*** may limit the right of one spouse to share in the family property. That being said, these contracts cannot limit a spouse's right to live in the matrimonial home or share in its value. In fact, if contracts are found to be too one-sided, courts have tended to throw them out.

https://www.prenup.ca/validity/

https://www.ylaw.ca/blog-resources/5-tips-bc-prenuptial-agreements/

Spousal Support

Much like child support, spousal support is to provide for the financial problems one spouse may face upon the breakdown of a marriage. Generally, spousal support is meant to both compensate the spouse for the marriage break-up and to assist that spouse become self-sufficient. It is not to punish one spouse. The length of time and amount that will be required to be paid varies from case to case depending on the circumstances. While each case is unique, the following factors influence spousal support decisions:

- Assets and financial status of each spouse including future earning potential;
- Ability of each spouse to be self-supporting;
- Ability of each spouse to provide support to the other spouse;
- Age and physical and mental health of each spouse;
- Length of time the couple was married and/or lived together;
- Length of time one spouse spent raising the family and not working; and
- Length of time it will take the one spouse to receive training or upgrade job skills.

Support payments may be lump sum, weekly or monthly payments and may be for a limited period of time or carry on indefinitely. Also, either spouse may apply to change the support levels as each spouse's situation changes.

While self-sufficiency was once thought to be the primary (if not only) goal of spousal support, it is now viewed as only one aspect to be considered in any award.

Case:
Bracklow v. Bracklow [1999] Supreme Court of Canada.
Present: Lamer C.J. and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.
ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Family law -- Spousal support -- Parties living together for seven years including three years of marriage -- Wife having various health problems from beginning of relationship and becoming disabled and unable to work and support herself -- Whether disabled spouse entitled to spousal support -- Obligation owed by healthy spouse to sick one when marriage collapses -- Family Relations Act, R.S.B.C. 1996, c. 128, ss. 89, 93(2) -- Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), s. 15.2(1), (4), (6).

The parties were married in December 1989 after living together for four years. During the first two years of their relationship, the appellant paid two-thirds of the household expenses because she was earning more money than the respondent and because her two children from a previous marriage were living with them. After 1987, they shared the household expenses equally. This continued while the appellant was working. When she became unemployed, the respondent kept the family going. The appellant had had various health problems from the beginning of the relationship and, in 1991, she was admitted to hospital suffering from psychiatric problems. She has not worked since and it is unlikely that she will ever work again. Except for periods when the appellant was too ill, the parties divided household chores. They separated in 1992 and were divorced in 1995. The respondent has remarried and his new wife is employed. The appellant obtained an interim spousal support order of $275 per month, increasing to $400 per month on May 15, 1994. She also receives $787 monthly in disability benefits. The trial judge found that no economic hardship befell the appellant as a consequence of the marriage or its breakdown. Nor were her health problems due to the marriage. He also found that there was no express or implied agreement between the parties that they were responsible for each other's support. The trial judge concluded that the appellant was not entitled to support from the respondent. However, he ordered the $400 per month payments to continue until September 1996, "a decision based upon the [respondent's] proposal not upon the necessity of law". The Court of Appeal affirmed the decision.

Matrimonial Home: the home in which the spouses ordinarily reside during their marriage.

- Example if a couple splits half their time at a home in Vancouver and half their time in a home in Whistler, both would be considered matrimonial homes (name on title does not matter).
    - "Ordinarily Occupied"

- Neither has the right to force out the other, but have the right to live in their matrimonial home, unless stated in a marriage contract.

- On separation court might grant exclusivity to one spouse.
    - Spouse would have to prove practical impossibility of sharing.
    - And prove why their claim has greater validity than the other spouse's.
    - Taken into consideration:
        - Each spouse's financial position, the availability of other accommodation and the best interest of the child(ren).

Division of Property on Spouse's Death:

- Usually spouses have a will and leave property to each other.
- If one spouse does not leave their stuff to the surviving spouse, the surviving spouse has 6 month to apply to the courts for a division of marital property.
    - This would divide the property just like they had gotten divorced before the spouse's death.
- Without a will the provincial and territorial legislation prevails and usually entitles the survivor to a share.
    - Common-law partners have no automatic claim to spouse's possessions, and must go to court.
        - Exception, any full title jointly owned assets – real estate, furnishings, vehicles, bank accounts, go automatically to the survivor.

Family Law Pt. 5

Enforcement of Child Support

A number of amendment to federal laws have been passed to allow the provinces to enforce child support payments. Provinces may search federal data banks (such as Customs and Revenue for income tax returns) to locate parents failing to make their required payments.

Additionally, the provinces allow custodial parents to register their child-support agreements with provincial offices that will monitor a non-custodial parent's payments (either receiving payments or by automatically deducting a parent's required payment directly off their pay cheque).

While there have been improvements to the enforcement issues, some parents continually refuse to meet their obligations. A few have even resorted to the ultimate tactic – refusing to work.

Who may be entitled to support?

Under provincial laws, parents must supports any unmarried children living at home up to the age of majority.

- **19-years-old**: British Columbia, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Yukon

- **18-years-old**: Alberta, Manitoba, Ontario, Prince Edward Island, Quebec, and Saskatchewan

Adopted children and children of previous relationships may be included. Additionally, some provinces may order continued support as long as the children are enrolled in a full-time educational programme. Usually, support only lasts until completion of the first degree or until the child turns 23 (whichever occurs first).

If a child turns 16 and withdraws from parental control, there is no further requirement for the parent to financially support the child.

Ex. Case
Chartier v. Chartier (1999) SCC

The Chartiers started living together in 1989 and were married in June of 1991. They had one child, Jeena, who was born in August 1990. They separated in 1992. While they were together the husband took an active role in caring for Jeena and Jessica, the mother's daughter from a previous relationship. While the husband never adopted Jessica, they discussed this possibility and he certainly acted as a father figure. The family even went as far as to change Jessica's last name to Chartier and have her birth registration changed to show the husband as Jessica's father.

After the separation, the Chartiers agreed that the husband could have access to Jessica, and he consented to an order that acknowledged Jessica was a "child of the marriage." Although he agreed to pay child support for Jeena, he contested the claim of support for Jessica. During their divorce proceedings in 1995, the court ordered him to pay support for both girls until a final report was prepared. In the final report, the judge found that the husband wanted to end his relationship with Jessica and found he did not have to pay child support. The mother appealed to the Manitoba Court of Appeal which upheld the trial judge's division. Finally, the mother appealed to the Supreme Court of Canada.

The Supreme Court determined that a step-parent who is found to be *in loco parentis* ("in the place of a parent") cannot unilaterally withdraw from the family relationship.

To determine if a spouse is in the role of a parent, the court must look at a number of factors including:

1. …whether the child participates in the extended family in the same way as would a biological child;
2. …whether the person provides financially for the child (depending on ability to pay);
3. …whether the person disciplines the child as a parent;
4. …whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child;
5. …the nature or existence of the child's relationship with the absent biological parent.

Parental Support
All provinces have laws that can be used to make children responsible for their parents. That being said, these laws have not been widely implemented and it is unclear as to how effective they would be in enforcing care.

Ex. *Family Relations Act* (B.C.)

> **Obligation to support parent**
>
> **90** (1) In this section:
>
> **"Child"** means an adult child of a parent
>
> **"Parent"** means a father or mother dependent on a child because of age, illness, infirmity, or economic circumstances.
>
> (2) A child is liable to maintain and support a parent having regard to the other responsibilities and liabilities and the reasonable needs of the child.

Spousal Support
During their marriage, partners are obligated to support each other financially, and in certain situations, that financial obligation continues after the marriage ends. Such obligations are particularly common when one spouse has acted as a full-time homemaker. When a spouse becomes financially dependent, such dependency may continue after separation.

The purpose of spousal support is to relieve the economic hardship one spouse suffers as a result of the breakdown of the marriage. Support payment are meant to help the disadvantaged spouse become financially self-sufficient within a reasonable period.

When deciding on spousal support, a judge examines the need of the spouse applying for support and the ability of the respondent spouse to pay. In applying this test, the Court takes into consideration how long the spouses have lived together, the role each person played in the relationship, the ability of one spouse to support the other, and whether there are any existing agreements relating to the financial support of one or the other.

In the case of common-law relationships, the partners have a legal obligation to support each other only if they have an agreement that specifies support payments, or if they are regarded as spouses under the family law act of their province.

Adoption
Adoption is the creation of a legal relationship between a child and his/her adoptive parents while at the same time ending that child's legal ties to their biological mother and father.

Adoption is a provincial matter and in B.C. is governed by the *Adoption Act*. A database is kept that can instantly match children available for adoption with would-be adoptive parents.

Who can be adopted? Who can adopt?
In B.C., any person under the age of 19 and unmarried may be adopted. To adopt, the adoptive parent(s) must be 19 or older and may or may not be married.

How are children placed?
Placement is comprised of three parts:

1. Selection of the adoptive parents
   - Typically, this involves screening and the development of a 'home study'
2. Placing the child in the custody of the adoptive parents for a period of time, usually 6-12 months, and monitoring the progress of the child
3. Making an adoption order for permanent custody with the parents

Consent
In most cases the biological parents must consent to the adoption. If consent is not freely given*, or if there isn't fully informed consent, the consent is not binding. Many provinces only allow adoptions after a set period of time – usually 7-14 days after birth.

A parent who has given consent may withdraw their consent for a limited period of time. For example, in B.C. consent may be withdrawn at any point of time up to 30 days. Usually, though not always, the child is placed in a foster home during this waiting period to minimize trauma on the adopting parents.

***Note:**
Under the *Criminal Code*, it is an offence to abuse a child physically or sexually. All provinces and territories have also enacted laws to protect children from neglect and abuse. Under these laws, everyone has the responsibility to report suspected cases of child abuse, which includes physical abuse, sexual abuse, failure to meet the child's medical needs, neglect, or abandonment.

In extreme cases, the courts may find that natural parents should no longer have the right to care for their children. In this situation, the Judge will issue a **Crown wardship order,** removing the children permanently from their parents' home. The children will then be moved to a foster home or placed for adoption.

If a child has been removed from a family through a Crown wardship order, permission for the adoption from the birth parents is not needed.

Types of Adoptions
There are three main types of adoptions in Canada.

1. **Domestic Adoptions -** are arranged through the provincial governments and require a home study and is generally not as expensive as the other two types of adoptions. Typically, however, these adoptions take more time and parents may have less chance of being able to select a child with the characteristics they desire. Finally, if the child is over 12 (younger in other provinces) the child must consent to the proposed adoption.

2. **Private Adoptions -** are arranged by an individual or an agency licensed by the government. Usually a pregnant woman will seek out an adoption agency with the desire to be able to select the parents of her child. A home study is still required but the costs

tend to be higher to the adoptive parents (up to $10,000). Despite these costs, private adoptions are now more common than domestic adoptions.

3. **International Adoptions -** a growing number of Canadian families are turning to foreign countries as a source of potential adoptive children. Countries such as China, Russia, Guatemala and Romania are the leading source of international adoptions. International adoptions tend to be faster and more expensive than the other forms of adoption.

Adoption of Aboriginal Children

Laws in many provinces and territories require adoptive parents to consider an Aboriginal child's heritage and traditions while raising the child. In many adoption cases, the Indian band to which the child belongs must be given notice of the intention to place the child for adoption. The band can request to have the child placed with or adopted by members of their band.

The Supreme Court of Canada holds that a child who is registered under the *Indian Act* will not lose his or her status as an Indian when adopted by non-Aboriginal parents.