

**FAMILY LAW****LAWG 273 (001)****Professor Angela Campbell****Fall 2013 Syllabus**

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Office:	New Chancellor Day Hall, Room 408 (Office of Graduate Programs in Law)
Telephone:	398-6694
Classes:	Tuesday and Thursday 13h00-14h30 200 NCDH
E-mail:	angela.campbell@mcgill.ca
Office Hour:	Wednesdays 14h30-15h30
Required Materials:	* <i>Family Law Fall 2013 Casebook</i> A. Campbell (available on <i>myCourses</i> ) * Statutory provisions indicated in this syllabus

**Course Objectives**

This course is designed to introduce you to various doctrines of family law in Canadian common law and within Quebec civil law. We will examine formal law's understanding of, and approaches to, the relationships that constitute "a family", and the rights and obligations that exist within these relationships. We will take a critical perspective to the themes of filiation and adoption, custody and access by parents and other actors, child and spousal support, spousal unions, and separation and divorce. More specifically, we will ask whether the ways in which formal law conceptualizes and treats these issues is consistent with present realities for Canadian families.

While the main basis of evaluation in this course is a final examination, students will also complete a two-part writing assignment, which will involve drafting a short analytical essay and an op-ed. This assignment is meant to allow students to explore and connect different issues in family law. It also aims to deepen the quality of students' learning by prompting critical perspectives and attempting to foster students' personal ownership over learning processes. The details of this assignment are set out below.

**Method of Instruction**

This course will be taught through a combination of lecture and problem-based learning formats. Students are invited to share the questions they have formulated on assigned readings, with a view to stimulating enriched discussion. I will use PowerPoint presentations, and will upload on *myCourses* slides for each class a few days in advance.

Three classes will be designed as workshop sessions during this term. These workshops are intended to provide an opportunity to think about and discuss course materials in an analytic fashion. The workshops will also invite students to work collaboratively on problems related both to the materials assigned for that class and to materials already covered in the course.

In addition, over the course of the term three non-evaluated quizzes will be given to foster familiarity with the assigned legislative provisions in this course.

## **Student Contributions and Involvement**

Students' involvement and participation in the classroom enriches the learning of all class members. My ambition is to create a safe and respectful space for discussion that is open to diversity of opinion and approach. I value – as I am sure you do – the background and thoughts that each class member brings to this course, and believe that diverse perspectives deepen one's learning environment and experience. Students are encouraged to ask questions and share comments anytime during class sessions. I also invite students to communicate with me directly outside of our classes (see "Reaching the Instructor" below).

### **Method of Evaluation:**

#### **a) Mandatory Final Exam (Wednesday December 11 at 9h30) (60% of final grade in the course)**

The final examination is mandatory for all students in the course. It will be an open-book exam during the examination period. It will be worth 60% of the student's final mark in this course.

#### **b) In-Term Assignments (40% of final grade in the course)**

Students will complete a **two-part** writing assignment worth 40% of the final mark in this course (20% per assignment part). The due dates for each part of this assignment are:

Part 1 (Short Essay):	Wednesday, October 9, 2013 (by 15h00 via <i>myCourses</i> )
Part 2 (Op-Ed):	Wednesday, November 20, 2013 (by 15h00 via <i>myCourses</i> )

- *Part 1: Short Essay*

The first part of this assignment involves the preparation of an essay that engages in a critical analysis of a particular issue, challenge or dilemma arising in family law. You may use the essay as a space for engaging with the social, cultural and policy forces that influence juridical approaches to a topic of interest in family law. Papers might also address tensions or conflicts that manifest themselves in legal approaches to one or more themes in family law. Note, however, that the topic selected should be narrow enough to allow for a sufficiently detailed and compelling analysis within the short span of this assignment.

Students are not expected to complete outside research for this assignment. Instead, the analysis should be based on course materials and your own critical reflections. If the topic of your essay is one that has already been covered in class, the essay must do more than reiterate points explored in our class discussions. Essays should be original and critically analytic, rather than simply descriptive of the particular issue selected. That is, the essay must have a thesis and build an argument that is logically supported by materials and doctrines emerging in family law. Moreover, it must be clearly written and organized, and must substantiate arguments or recommendations advanced on the basis of more than anecdotal experience or personal opinion.

The essay must be **1000 words**. Please include a word count.

The essay will be worth 20 percent of your final grade in this course.

The short essay must be submitted through myCourses by Wednesday, October 9 at 15h00. I will do my best to return graded papers within 10 days. My feedback is intended to help you write the second (op-ed) part of this assignment, described below.

- *Part 2: Op-Ed Exercise*

The second part of this assignment involves writing an op-ed piece for a national publication that is read by the law public. You are encouraged to focus your op-ed on a topic, idea, question or approach that is distinct from the issue(s) broached in your short essay, although you might also wish to use the op-ed to elaborate on or develop a theme addressed in the earlier exercise.

While the short essay is meant to be premised on critical introspection, the op-ed is written to share one's viewpoint and to educate the public. You should therefore base your op-ed exercise on the expertise and insights garnered over the duration of our course. Keep in mind that the best op-eds:

- wrestle with complex or controversial topics;
- revisit and question conventional wisdom/the status quo;
- express an original or alternative view; and
- raise awareness about socially relevant issues.

Note that your op-ed should also take into account feedback that I have given on the first part of this in-term assignment (that is, on your short essay).

The op-ed must be **700 words**. Please include a word count.

This op-ed assignment will be worth 20 percent of your final grade in this course.

The op-ed assignment must be submitted through *myCourses* by Wednesday, November 20 at 15h00.

### **MyCourses**

I will make use of the *myCourses* site for this course to post information such as the PowerPoint lecture slides and links to assigned legislative provisions.

Assignments for this course must also be submitted via uploading onto *myCourses*.

### **Language of Expression**

In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

Students are also welcome to intervene in class discussions in either English or French.

## **Academic Integrity**

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see [www.mcgill.ca/students/srr/honest/](http://www.mcgill.ca/students/srr/honest/) for more information)

## **Students with Disabilities**

If you have a disability or require any accommodation, please do not hesitate to contact me to discuss the situation. It may also be helpful to contact the Office for Students with Disabilities at 398-6009.

## **Reaching the Instructor**

If you wish to discuss any substantive issue relating to the course, I encourage you to visit my office during office hours. If you have a commitment that prevents you from attending at my office during the set office hour (such as another course scheduled at this time), please email me and we will set up an alternate meeting time. Apart from such circumstances, I prefer to take queries from students in person rather than by email.

## **Course Plan**

The topics and readings planned for each week are set out below.

### **Tuesday September 3:**                   *Community and State Interest in Families*

#### Readings:

- CBC News, “Protest Turns Violent after France Legalizes Gay Marriage: French justice minister says 1<sup>st</sup> same-sex weddings could be as soon as June” (23 April 2013) (<http://www.cbc.ca/news/world/story/2013/04/23/france-passes-same-sex-marriage-law.html>) [shared via email]
- Josh Wingrove, “New Law Sets Out Rules for Divorces on Reserves Despite First Nations Opposition” The Globe and Mail (11 June 2013) [shared via email]

### **Thursday September 5:**                   *Rosh Hashanah – No Class*

### **Tuesday September 10:**                   *Stasis and Dynamism in Family Law*

#### Readings:

- *Reference re: Section 293 of the Criminal Code of Canada* 2011 BCSC 1588 (excerpts)
- Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past.”

### **PART I:                   RELATIONSHIPS BETWEEN CHILDREN AND PARENTS: UNDERSTANDING FILIATION/PARENTAGE**

#### **A) Filiation by Blood and by Assisted Procreation:**

### **Thursday September 12:**                   *Presumptions & Fictions Locating Paternity: Social and Biological Fatherhood*

#### Readings:

- C.C.Q. arts. 522-527, 530, 533, 535, 535.1, 538-541
- Ontario *CLRA*: ss. 4-6, 8-10
- Nicholas Kasirer, “Note: Establishing the Bond of Filiation and the Civilian Conception of Family Relations”
- *Massie c. Carrière*, [1972] C.S. 735

**Tuesday September 17:**

***Presumptions & Fictions***

***Locating Paternity: Social and Biological Fatherhood (con't)***

Readings:

- *Droit de la famille – 11394*, 2011 QCCA 319
- *Droit de la famille – 09358*, [2009] J.Q. no.1392 (C.A.)
- *L. (T.D.). c. L. (L.R.)* (1994), 114 D.L.R. (4<sup>th</sup>) 709 (Ont. Gen. Div.)
- *Tenby v. Hawke*, 1999-05-11, N.W.T.S.C. (IJJCan)

**Thursday September 19:**

***Tracing Filiation in Assisted Procreation Contexts; Challenging the Binary of Parenthood***

Readings:

- Robert Leckey, “Where the Parents are of the Same Sex: Quebec’s Reforms to Filiation” (excerpts)
- *Droit de la famille – 11729*, 2011 QCCA 1180 (leave to appeal denied)
- *L.C. v. S.G.*, [2004] J.Q. no. 7060 (QL) (C.A.)
- *A.A. v. B.B.*, 2007 ONCA 2 (CanLII)

**Tuesday September 24:**

***Locating Maternity & the Legal Status of Surrogacy Agreements***

Readings:

- *K.M. v. E.G.* 37 (2005) Cal. 4<sup>th</sup> 130 (Cal. Sup. Ct.)
- *Droit de la famille – 072895*, 2007 QCCA 1640
- C.C.Q. art. 541
- *Assisted Human Reproduction Act*, s.6
- *Adoption — 091*, 2009 QCCQ 628
- *Adoption — 09184*, 2009 QCCQ 9058
- *Adoption – 10329*, 2010 QCCQ 18645

**Thursday September 26:**

***Workshop #1***

- No assigned readings

**B) Filiation by Adoption**

**Tuesday October 1:**

***Key Principles, Presumptions and Regulatory Frameworks***

**\* Non-evaluated quiz #1**

Readings:

- C.C.Q. arts. 543-561, 566-578.1
- *Child and Family Services Act of Ontario*: ss.136-139, 145.1, 145.2, 146, 149(1), 153.6, 157, 158, 160(1)
- *In re Robert Paul*, 481 N.Y. 2d 652 (C.A. 1984)
- *Droit de la famille 1914*, [1996] R.J.Q. 219 (C.A.)

**Thursday October 3:** *Consent and Open Adoption*Readings:

- *Re B.C. Birth Registration No. 030279* (1990), 24 R.F.L. (3d) 437 (B.C.S.C.)
- *Droit de la famille 1704*, 1992 CanLII 3206 (QC C.A.)
- *J.J. c. S.V.*, [2002] R.D.F. 167 (C.S.)
- *J.G. (Dans la situation de)*, [2005] J.Q. no 17572 (C.Q.)
- Robert Leckey, “Adoptive parents aren’t second best”

**Tuesday October 8:** *Aboriginal Adoption and Aboriginal Legal Traditions*Readings:

- *Racine c. Woods*, [1983] 2 R.C.S. 173
- *Directeur de la protection de la jeunesse c. J.K.*, 2004 CanLII 60131 (QC C.A.)
- *Re Adoption of Katie* (1961), 32 D.L.R. (2d) 686

**Wednesday October 9:** **Short Essay Assignment due by 15h00****C) Locating Parenthood Functionally?****Thursday October 10:** *In Loco Parentis*Readings:

- *Divorce Act*: s. 2 (definition of “child of the marriage”)
- *Family Law Act* (Ont.): s. 1 (definition of “child”)
- C.C.Q. arts. 33, 598, 599, 611
- Ontario *CLRA*: s. 21
- *Chartier v. Chartier*, [1999] 1 R.C.S. 242
- Carol Rogerson, “The Child Support Obligation of Step-Parents” (excerpt)
- *(V.) c. F. (S.)*, 2000 CanLII 11374 (QC C.A.)

**Tuesday October 15:** *In Loco Parentis (con’t)*Readings:

- *Cornelio v. Cornelio*, 2008 CanLII 68884 (ON. S.C.)
- *Doe v. Alberta*, (2007) ABCA 50
- *Droit de la famille-2492* [1996] R.D.F. 662 (C.S.)
- *C.R. v. B.L.B.* [2005] A.J. No. 726 (ABQB)

**PART II: RELATIONSHIPS BETWEEN CHILDREN AND PARENTS:  
THE EFFECTS OF FINDING A FILIAL RELATIONSHIP****A) Parental Authority and Custody****Thursday October 17:** *Meaning and Scope of Parental Authority and Custody  
Workshop #2*Readings:

- *Divorce Act*: ss. 16(1), (4), (5), (6), (8), (9), (10)
- C.C.Q. arts. 32-34, 598-601, 603-607, 610, 612

- Ontario *CLRA*: ss. 19, 20, 21, 24, 28
- Nicholas Kasirer, “Note on Parental Authority”
- *W.(D.) c. G.(A.)*, 2003 IJCan 47442 (QC C.A.)
- *Young v. Young*, [1993] 4 S.C.R. 3 (excerpt)
- *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (headnote)

**Tuesday October 22:**

***Challenges to the Best Interests Principle:  
Religious, Cultural and Racial Identity***

Readings:

- Shauna Van Praagh, “Religion, Custody and a Child’s Identities” (excerpts)
- *Van de Perre c. Edwards*, [2001] 2 R.C.S. 1014 (excerpts)

**Thursday October 24:**

***Challenges to the Best Interests Principle con’t:  
Domestic Violence and Obstructions to Access***

Readings:

- *Pollastro v. Pollastro* (1999) 43 O.R. (3d) 486 (Ont. Ct. App.)
- Nicholas Bala, *Spousal Violence in Custody and Access Disputes* (excerpt)
- *Harrison v. Harrison* [1987] M.J. No.447 (QL)
- *Rogerson v. Tessaro*, [2006] O.J. No. 1825 (C.A.)
- *LEG v. AG* 2002 BCSC 1455 (excerpt)

**B) Obligations of Support**

**Tuesday October 29:**

***Obligations of Support between Children and Parents***  
 \* Non-evaluated quiz #2

Readings:

- *Divorce Act*: s. 15.1
- C.C.Q. arts. 585-590, 595
- *Family Law Act* (Ont.): ss. 31, 32, 33(1), (2), (7), (11), (12), (14), (15), 34(1)
- *Droit de la famille - 138* (1984) C.A. Que.
- *Skrzypacz c. Skrzypacz* (1996), 22 R.F.L. (4th) 450 (Ont. Prov. Div.)
- *Droit de la famille 2626*, [1997] R.J.Q. 1117 (C.S.)

**Thursday October 31:**

***Child Support Guidelines: Role and Application***

Readings:

- Federal Child Support Guidelines: ss. 1, 3, 4, 5, 8, 9, 10
- Regulation to the C.C.P. respecting the determination of child support payments (Quebec): ss. 1, 2, 3, 10
- *Willick v. Willick*, [1994] 3 S.C.R. 670 (headnote)
- *Francis v. Baker*, [1999] 3 R.C.S. 250 (headnote)
- *Contino v. Leonelli-Contino*, 2005 SCC 63 (headnote)

**Tuesday November 5:**

***Workshop #3***

- No Assigned Readings

**PART III:**

**ADULT INTERPERSONAL RELATIONSHIPS**

## A) Vie Commune/Conjugal Life

**Thursday November 7:** *Evolving Norms of Marriage and Conjugal Life*

Readings:

- C.C.Q. arts. 392-396
- *Family Law Act* (Ont.): ss. 19(1), 20(1), 21(1), 29, 30
- *R. v. Tolhurst*, 1937 CarswellOnt 35 (Ont. Sup. Ct.)
- *Quebec (Attorney General) v. A.*, 2013 SCC 5 (excerpts)

**Tuesday November 12:** *Evolving Norms of Marriage and Conjugal Life*

Readings:

- *Halpern v. Canada (Attorney General)* [2003] O.J. No.2268 (QL)
- Robert Leckey, “A Decade of Same-Sex Marriage in Ontario” *Ottawa Citizen* (9 June 2013)

## B) Dissolution of Spousal Unions:

**Thursday November 14:** *Divorce: Evolutions of Law*

Readings:

- *Divorce Act*: ss. 8, 11
- C.C.Q. art. 2639
- *Droit de la famille - 841* [1990] R.J.Q. 1571 (C.S.)
- *Morrison v. Morrison*, [1972] P.E.I.J. No. 48
- *S.E.P. v. D.D.P.*, [2005] B.C.J. No. 1971 (S.C.)

**Tuesday November 19:** *Religion, Culture, Divorce*

Readings:

- *Re Morris and Morris* (1973) 42 D.L.R. (3d) 550 (Man. C.A.)
- *Bruker v. Marcovitz*, 2007 SCC 54 (headnote)
- Pascale Fournier, “The Erasure of Islamic Difference in Canadian and American Family Law Adjudication” (excerpts)

**Wednesday November 20:** Op-Ed Assignment due by 15h00

**Thursday November 21:** *Effects of Dissolution: Support Obligations between Spouses*

\* Non-evaluated quiz #3

Readings:

- *Divorce Act*: ss. 15.2, 17(1)(a) and 17(7)
- C.C.Q. arts. 392, 427, 428, 429, 511, 521.6, 521.17, 585
- *Moge v. Moge* [1992] 3 R.C.S. 813 (headnote)
- *Bracklow v. Bracklow* [1999] 1 R.C.S. 420

**Tuesday November 26:** *Effects of Dissolution: Support Obligations between Spouses*

Readings:

- *Miglin v. Miglin* [2003] 1 R.C.S. 303 (headnote only, full text is an optional reading)

- *Rick v. Brandsema*, 2009 SCC 10 (excerpts)
- *Kerr v. Baranow*, 2011 SCC 10 (excerpts)
- *Family Law Act* (Ont.): ss. 29, 30, 33(8), 33(9), 33(10)

**Thursday November 28:**

*Catch-up & Review*