

FAMILY LAW

LAWG 273 (001)

Professor Angela Campbell

Winter 2010 Syllabus

Office: New Chancellor Day Hall, Room 615

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Classes: Friday 2:00-5:00

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Office Hours: I am in my office daily but my timing throughout the term tends to vary. Please email me if you wish to see me for any issue pertaining to the course; I'd be happy to make an appointment to meet with you.

Required Materials: * Casebook: *Family Law/Droit de la famille* for A. Campbell

* *Statutory provisions indicated on myCourses*

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 have the opportunity to complete an optional assignment, which will involve the writing of a reflective essay and an op-ed assignment. 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 optional assignment are set out below.

Finally, although this is a fairly large class, a main objective is to create an atmosphere of comfort, collegiality and familiarity in order to generate active student participation. We will strive to achieve this end through the use of a "panel" system. Students named to the panel on a particular week will be required to have read assigned materials and formulate one or two questions that invite a critical reflection of these readings. These questions should be sent to me by email by the Wednesday before the class in which the student is an assigned panelist. These questions will help to shape our class discussions each week.

Students will be named to a panel according to the first letter of their family names, according to the following schedule:

Friday January 8:	<i>Introduction: NO PANEL</i>
Friday January 15:	A-C
Friday January 22:	D-F
Friday January 29:	G-I
Friday February 5:	J-L
Friday February 12:	M-N
Friday February 19:	<i>Workshop #1: NO PANEL</i>
Friday February 26:	<i>READING WEEK</i>
Friday March 5:	O-P
Friday March 12:	Q-R
Friday March 19:	S-U
Friday March 26:	<i>Workshop #2: NO PANEL</i>
Friday April 2:	<i>GOOD FRIDAY</i>
Friday April 9:	V-Z

Method of Instruction

This course will be taught through a combination of lecture and problem-based learning formats. Students on panel each week will be invited to share the questions they have formulated on assigned readings, with a view to stimulating enriched discussion. I will use Power Point presentations, and will upload on *myCourses* slides for each class a few days in advance. Note that there will be considerable group interaction during in-class exercises and during the two classes designed as workshops during the 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.

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. I therefore aim to provide students with ample opportunity to voice their thoughts in this class, in particular, through the following:

- First, you are of course welcome to ask questions and share comments at any point during our class sessions.
- Second, as indicated above, a panel structure is created to require students to engage in/prompt dialogue with the class.
- Third, I invite you to communicate with me directly outside of the class by email or in person to raise questions or comments about the course (see “Reaching the Instructor” below).
- Fourth, on the first class, I will ask two students to volunteer as **class representatives**. Class Representatives will have two specific tasks. First, they will be asked to make themselves open and available to students to receive feedback about this course. They should be willing to hear feedback and comments via email or through in-person communication. I will then meet with Class Representatives mid-way through the term so that they can transmit to me information received from colleagues. This is done to encourage ongoing feedback about the course. While students should feel free to address any questions or comments to me directly, it is also possible to communicate with me while remaining anonymous through the class reps.

Method of Evaluation:

a) Mandatory Final Exam (Friday, April 16, 2010)

The final examination is mandatory for all students in the course. It will be an open-book exam during the examination period.

The exam will be worth:

- 100% for students who do not complete the optional assignment in full; or
- 70% for students who complete optional assignment **in full**.

b) Optional Assignment (30% of final grade in the course, if completed **in full)**

Students who complete a two-part optional assignment in full will be relieved of writing a question worth 30% on the final exam. The due dates for each part of this assignment are:

Part 1 (Reflection Paper): Thursday, February 18, 2010 (by 15h00 at SAO)
 Part 2 (Op-Ed): Thursday, April 1, 2010 (by 15h00 at SAO)

- *Part 1: Reflection Paper*

The first part of this optional assignment involves the preparation of a reflective 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 paper is one that has already been covered in class, please ensure that your work does more than reiterate points explored in our class discussions. Your reflection paper should be original and critically analytic, rather than simply descriptive of the particular issue selected. Moreover, it should be clearly written and organized, and must substantiate arguments or recommendations advanced on the basis of more than anecdotal experience or personal opinion.

The paper must be **1200 words**. Please include a word count.

The reflection paper will be worth 15 percent of your final grade in this course *if the optional assignment is completed in full*.

The reflection paper must be submitted to the SAO by Thursday, February 18 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 this optional assignment involves writing an op-ed piece for a national, bilingual publication. 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 reflection paper, although you might also wish to use the op-ed to elaborate on or develop a theme addressed in the earlier exercise.

Note that while the reflection paper 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.

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

This second part of the optional assignment will be worth 15 percent of your final grade in this course *if the optional assignment is completed in full*.

The op-ed assignment must be submitted to the SAO by Thursday April 1 at 15h00.

- *Importance of Completing Both Parts of the Optional Assignment*

Students who complete both parts of this optional assignment will get two benefits:

- (1) individualized feedback on their writing; and
- (2) a release from writing one question worth 30 percent on the final exam (all students will have the same amount of time to write the final exam).

Should a student complete only one part of the optional assignment, she/he will get just one benefit: individualized feedback on her/his writing. He/she will not be relieved of an exam question and the exam will count for 100% of his/her final grade.

Electronic Access

I will make use of the *myCourses* internet site for this course to post information such as the Power Point lecture slides. In addition, I will inform the class of the specific legislative provisions to examine for each class.

Language of Expression

In accordance 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/integrity for more information). McGill's website entitled: "Student guide to avoid plagiarism" is also noteworthy (see <http://www.mcgill.ca/integrity/studentguide/>).

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 make an appointment to meet with me. If you prefer to email me with questions of a more formal nature, that is also fine. While I generally respond promptly, please note that my turn-around time for replying to messages sent electronically can be up to two weekdays.

Course Plan

The topics planned for each week are set out below. In addition to these readings, I ask that you read through the legislative provisions assigned for each class on *myCourses*. These will be posted weekly.

Friday January 8: *Introduction (no panel)*

Readings:

- Law Commission of Canada, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships*
- Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past.”
- Angela Campbell, “Bountiful Voices” (excerpts)
- Angela Campbell, “In the Name of the Mothers”

Friday January 15: *Filiation by Blood and by Assisted Procreation: Presumptions & Fictions; Locating Paternity (Panel: A-C)*

Readings:

- Nicholas Kasirer, “Note: Establishing the Bond of Filiation and the Civilian Conception of Family Relations”
- *R. v. S.*, [1988] O.J. No. 2788 (Prov. Ct.)
- *Massie c. Carrière*, [1972] C.S. 735
- *Rypkema v. H.M.T.Q. et al.*, [2003] BCSC 1784 (IIJCan)
- Robert Leckey, “Where the Parents are of the Same Sex :Quebec’s Reforms to Filiation” (excerpts)
- *Trociuk v. British Columbia (Attorney General)*, [1999] B.C.J. No. 1146 (QL)
- *L. (T.D.). c. L. (L.R.)* (1994), 114 D.L.R. (4th) 709 (Ont. Gen. Div.)
- *S. (E.A.) v. B. (K.M.)* (1989) 24 R.F.L. (3d) 220 (Ont. D. Ct.)

- *Tenby v. Hawke*, 1999-05-11, N.W.T.S.C. (IIJCan)

Friday January 22: ***Filiation by Blood and by Assisted Procreation: Locating Paternity con't; Locating Maternity (Panel: D-F)***

Readings:

- *Droit de la famille* – 2143, [1995] R.D.F. 137 (C.S.)
- *Droit de la famille* – 09358, [2009] J.Q. no.1392 (C.A.)
- *L.C. v. S.G.*, [2004] J.Q. no. 7060 (QL) (C.A.)
- *L.B. v. Li. Ba* 2006 QCCS 591 (IIL Can)
- *Civil Code of Québec*, art. 541
- *Family Law Act*, R.S.A. s.12
- *Assisted Human Reproduction Act*, s.6

Friday January 29: ***Filiation by Blood and by Assisted Procreation: Locating Maternity con't (Panel: G-I)***

Readings:

- *A.A. v. B.B.*, 2007 ONCA 2 (CanLII)
- *K.M. v. E.G.* 37 (2005) Cal. 4th 130 (Cal. Sup. Ct.)
- --, France: Gay couple recognized as parents (Sept. 24, 2004)
- --, French lesbian parents granted family status (Sept. 22, 2004)
- *Droit de la famille* – 072895, 2007 QCCA 1640
- *Adoption* — 091, 2009 QCCQ 628
- *Adoption* — 09184, 2009 QCCQ 9058

Friday February 5: ***Filiation by Adoption: Role of Consent; Open Adoption (Panel: J-L)***

Readings:

- *In re Robert Paul*, 481 N.Y. 2d 652 (C.A. 1984)
- *Droit de la famille* 1914, [1996] R.J.Q. 219 (C.A.)
- *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.-M. J. c. S.V. et D.J.* [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”

Friday February 12: *Filiation by Adoption: Aboriginal Traditions; Locating parenthood functionally? In loco parentis; other relationships (Panel: M-N)*

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
- *Chartier c. 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.)
- *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)

Friday February 19: *Effects of a filial relationship: parental authority and custody (workshop #1: no panel)*

Readings:

- Nicholas Kasirer, “Note on Parental Authority”
- *W.(D.) c. G.(A.)*, 2003 IIJCan 47442 (QC C.A.)
- *V.L. v. D.L.* (2001), 97 Alta. L.R. (3d) 51 (C.A.)
- *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (headnote)

Friday February 26: **Reading Week – no class**

Friday March 5: *Effects of a filial relationship: parental authority and custody; challenges to the best interests principle (Panel: O-P)*

Readings:

- Shauna Van Praagh, “Religion, Custody and a Child’s Identities” (excerpts)

- *Van de Perre c. Edwards*, [2001] 2 R.C.S. 1014 (excerpts)
- *Pollastro v. Pollastro* (1999) 43 O.R. (3d) 486 (Ont. Ct. App.)
- Nicholas Bala, *Spousal Violence in Custody in Access Disputes* (excerpt)
- *Harrison v. Harrison* [1987] M.J. No.447 (QL)
- *Rogerson v. Tessaro*, [2006] O.J. No. 1825 (C.A.)

Friday March 12: *Effects of a filial relationship: obligations of support (Panel: Q-R)*

Readings:

- *Cole v. Cole* (1995) 15 R.F.L. (4th) 399
- *Droit de la famille - 138* (1984) C.A.Qué.
- *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.)
- *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)

Friday March 19: *Vie Commune/Conjugal Life (Panel: S-U)*

Readings:

- Brenda Cossman and Bruce Ryder, “What is Marriage-Like Like? The Irrelevance of Conjuality” (2001) 18 Can. J. Fam. L. 269.
- *R. v. Tolhurst*, 1937 CarswellOnt 35 (Ont. Sup. Ct.)
- *Miron c. Trudel* [1995] 2 R.C.S. 418 (excerpts)
- *Droit de la famille — 091768*, 2009 QCCS 3210 (CanLII) (excerpts)
- *L. L. c. È. J.*, 2004 CanLII 39851 (QC C.S.)
- *Halpern v. Canada (Attorney General)* [2003] O.J. No.2268 (QL)
- *Horvath v. Fraess* (1997) 36 R.F.L. (4th) 32 (excerpts)
- *Baron v. Bull* (1987) 5 R.F.L. 427 (Alta. Q.B.)
- *Droit de la famille — 841* [1990] R.J.Q. 1571 (C.S.)

Friday March 26: *Dissolution of Spousal Unions: Divorce: Evolutions of Law; Religion, culture, divorce (workshop #2 – no panel)*

Readings:

- *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.)
- *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)

Friday April 2:**Good Friday – no class****Friday April 9:*****Effects of Dissolution: Support Obligations between Spouses; REVIEW (Panel: V-Z)***Readings:

- *Moge v. Moge* [1992] 3 R.C.S. 813 (headnote)
- *Bracklow v. Bracklow* [1999] 1 R.C.S. 420
- *Miglin v. Miglin* [2003] 1 R.C.S. 303 (excerpts)
- *Rick v. Brandsema*, 2009 SCC 10 (excerpts)