

Section 3: Civil Law

Lesson Plan 3: Family Law

SNAPSHOT

Grade Level	8-10
Duration	2 periods

Introduction

This lesson introduces students to family law. In the past, the basic family structure was the nuclear family. These families consisted of a husband, wife, and their children. Things have changed in the “typical Canadian family” over the past few years. When a family breaks up, a lot of changes occur and a number of decisions must be made. This affects all members of the family. Family mediations are helpful in this process. All members of the family have rights and responsibilities.

Objectives

By the end of the lesson, students will:

- Understand the legal requirements and terms of a family, marriage and common law partnerships under the law
- Consider what happens when a family breaks up and what decisions need to be made
- Examine the courts that deal with family law
- Understand the importance of mediation as an alternative to court proceedings in family law cases
- Know some of the rights of children and responsibilities of parents
- Learn how to critically think about their learning and apply it to family law cases

Focus Questions

1. What is a family?
2. How has the definition of family changed?
3. What does common law mean?
4. What happens when families break up?
5. What is mediation?
6. What rights do children have within a family?
7. What obligations to parents have?

Teaching Summary

Topic 1: Family Unit Defined

This topic is covered in Activities 1 and 2. Students will read *Handout 1: What is a “Family” in Canada?* They will then write about and discuss how the term “family” has changed in Canada. Students will then read *Handout 2: Legal Requirements of Marriage* and use it to complete *Handout 3: Underage Marriage: A Case Study*. They will answer three critical thinking questions.

For this optional exercise, students will use *Handout 4: Same Sex Marriage Equal Under the Law*. They will write about and discuss whether same-sex couples should have the same rights as heterosexual couples.

Topic 2: Family Break-Up

This topic is covered in Activity 3. Students will receive *Handout 5: What Happens When Families Break Up?* and *Handout 6: A Simplified Mediation Process* to read over. When they are finished, they will role play a group mediation session using *Handout 7: A Family Law Mediation Simulation*.

Topic 3: Rights of Children and Responsibilities of Parents

Activity 4 covers this topic. Students will receive *Handout 8: Rights of Children and Responsibilities of Parents*. Students will read a scenario about a family household in which abuse is occurring. They will be asked to right an ending to the story, taking into account what they have learned in this lesson.

CONTENT

Topic 1: Family Unit Defined

Changes in the Structure of the Family in Canada

Family law is a complicated aspect of law in Canada. The structure of family is ever fluctuating. A family does not look the same as it did even 10 years ago. The basic family structure consisted of a mother, father and their children. Usually families were formed through marriage. But things have change in the “typical Canadian family.”

Statistics Canada now defines family as married couples with or without children, unmarried couples in a common law relationship with or without children as well as lone or single parents with children. People are marrying later in life because of a desire to have a good education and career before starting a family. Families are now smaller, having only one or two children. New relationships also make up Canadian families; these include common law and same-sex partners, blended families, extended families where grandparents share the home and two income families with or without children. For the legal requirements of marriage see *Handout 2: Legal Requirements of Marriage*.

Common Law Partnership

Common law partnership has become a facet of family life in Canada. Many people believe that if you live with a partner for a certain length of time you become married. This is not true. To be married, you must enter into a legally binding agreement. A common law relationship or cohabitation is similar to marriage and the partner is seen as a spouse. Cohabitation means the act of living together in an intimate relationship without being married. In all provinces and territories, common law relationships have some benefits under the law.

Unlike in married separations or divorce where the assets are equally divided, in a common law separation each partner can only take what they have paid for or came into the relationship with; it is like a business partnership. When a partner dies in a marriage, the remaining partner inherits the estate; however, in a common law partnership, the deceased must have a will specifying that the common law partner is the heir. With no will, the surviving partner must go to court to claim a share of the estate. If a common law partnership is longer than three years in length and it dissolves, partners can claim support for children as well as themselves.



Legal Requirements of Marriage

When people marry in Canada, they enter into a legally binding contract as long as certain requirements are met. When you go to a wedding, whether it is a religious marriage in a church performed by a member of the clergy or a civil ceremony performed by a Justice of the Peace, a legal register is signed. If this register is not signed, you are not legally married. If your marriage ends in divorce, it is the legal termination of a contract. Most provinces have a *Marriage Act*. If the essentials of marriage are not met, the marriage could be null and void.

Essential Requirements of Marriage

- *Mental Capacity*: You must have full mental capacity. No one can marry if they are devoid of mental capacity due to illness, drugs or alcohol.
- *Genuine Consent*: No one can be forced to get married. Both parties must give full consent to the marriage or the marriage is illegal. (Example: If you marry the wrong twin or the wife's parents threaten her with murder if she does not get married.)
- *Minimum Age*: This is dependent on the province. In BC, the legal age without parental consent is 19 or older and at least 16 with parental consent. Nunavut and Yukon require parental consent for persons under 19 years of old who wish to marry. In Quebec, the legal age for marriage is 16, but people under 18 may marry with parental consent.
- *Close relationship*: You cannot marry someone in your immediate family that includes parents, sibling or half siblings and grandparents.
- *Unmarried status*: Both people must not already be married when they get married. Monogamy is the only form of marriage at this time in Canada. Bigamy, being married to more than one person at one time, is illegal in Canada and is a criminal offence.
- *Marriage Licence or Bann*: You must have a legal marriage licence or a Bann (a document read at a place of worship).
- *Religious or Civil Service*: You can choose to have either a religious service or a civil service. Both services must be performed by a registered or licensed official to make it legal under the law.
- *Registration*: You must also register your marriage to obtain a certificate of marriage, a document that proves the marriage.

Topic 2: Family Break-Up

Getting Separated

Every year in BC, thousands of married and common-law couples stop living together. This is called separation. They need to make important decisions, especially if there are children.



They have to decide on the following questions:

- Where will the children live?
- What arrangements will be made so the child can see the other parent?
- How will they support the children?
- How will they divide the things they own?

For example, Susan and Bill talked about these questions and agreed on the following:

- The children will stay with Susan.
- The children will visit with Bill every weekend.
- Bill will pay child support, and also pay for extra expenses for the children.
- Susan and the children will stay in the family home. Bill will get the car and Susan will keep the furniture.

Getting Divorced

Divorce is the only way to legally end a marriage. The court says the marriage is over. The only legal reason for divorce is “marriage breakdown.” The judge will decide there was a marriage breakdown if the husband and wife have not lived together for one or more years; or the husband or wife committed adultery (made love with someone else); or one person was physically or mentally cruel to the other.

If the married couple agrees to get a divorce, they may not need a trial. The judge can make a decision when he or she reads their documents. If there is a child involved, the judge will want to see that the parents have agreed upon who has daily care of the child and how the parents will support the child.

Separation Agreements

Sometimes a separating couple, (married or common-law) write a separation agreement. A separation agreement says in writing what the couple agrees to do to provide support for the children. It helps them not argue about it later.

A couple can also get help from a family justice counsellor or go to Family Court. The family justice counsellor can help them to write a separation agreement if they both agree about what is in the agreement. Family justice counsellors can help a couple make an agreement about the children and about support money, but not about property. They can also act as mediators.

If a Couple Can't Agree

If a couple can't agree, they can ask a mediator to help them. A mediator is someone who helps people listen to each other and then come to an agreement. A mediator can be a family justice counsellor, a lawyer, a person trained in mediation, or even someone who is respected in the community.

Family justice counsellors work as mediators and counsellors to help couples reach an agreement. This is especially important if the couple has children. There is no charge for the services of a family justice counsellor, and you do not have to start a court case to get help.

You can call Enquiry BC for information or check their website to find family justice counselors in your community. Call 250-387-6121 (Victoria), 604-660-2421 (Vancouver), or toll-free 1-800-663-7867 (elsewhere in BC).

If talking to a mediator doesn't help, then a couple may go to court. In court, a judge can decide the things that the couple can't agree on. It is a good idea to get some advice from a lawyer before going to court. In some cases, a husband or wife may be able to get legal aid if they can't afford a lawyer. Check with your local Legal Services Society to find out more.

Family Mediation

When a marriage dissolves in divorce or separation, most of the interested partners do not want their disagreement to escalate to court proceedings. In many of these cases there are children involved. In 1985, the *Divorce Act* stated that reconciliations and family mediation could be used to deal with issues that cause conflict in the marriage. It is a volunteer conflict-resolution process. Usually spouses meet, without their lawyers, with a trained mediator to resolve their issues. Mediators are usually trained social workers, psychologists or lawyers.

Services provided by a mediator include:

- Providing a safe and supportive setting for all parties, including children
- Helping to clarify and identify the issue
- Ensuring free communication that is fair, informed and unbiased
- Offering clients information on effective decision making
- Ensuring that discussions are respectful and nonthreatening
- Not giving legal advice

Advantages of Mediation in Family Disputes

Mediation is highly encouraged by the governments and courts in Canada because it:

- Keeps the decision-making with the people who know the children best - the parents
- Promotes co-operation and compromise, reducing hostility and conflict
- Helps protect family relationships by improving communication between the parents
- Is a confidential process which cannot be used in a court
- Is cheaper than litigation

Immigrant Women and Separation

Some immigrant women want to leave their husbands, but they're afraid. They think they won't be able to stay in Canada alone. This is not usually true. If the woman is a permanent resident (landed immigrant), she can stay in Canada even if she separates or gets divorced.

Sometimes a woman comes to Canada to marry a man. He is her sponsor. A sponsor promises the government to support his wife for a period of three to 10 years. The man asks the government to make her a landed immigrant. This takes a long time. If the couple separates (stops living together) before the wife gets her landed immigrant

papers, she might have to leave Canada. She needs to talk to a lawyer before they separate.

The man still has to support her if they stop living together. The man may say he won't support her. Or maybe he doesn't have enough money. Maybe she can't work because she has a small baby or because she doesn't speak English. She should then go to Family Court. The judge may tell her husband to pay her some money every month.

Families Change

Parents and children need help and support while going through the family break-up. The [Families Change](#) website has sections for both parents and children and provides important information and strategies for dealing with the issues. There is a section tailored to younger children as well as a section for youth teens and pre-teens.

Topic 3: Rights of Children and Responsibilities of Parents

Rights and Responsibilities

If you are married, or if you have been in a common-law relationship for two years or more, you have legal rights and responsibilities about caring for children and caring for each other.

Right to Access

In some cases, one parent will have *sole* custody. In this arrangement, the child lives with one parent most of the time. The responsibilities for taking care of the child and making decisions about the child belong to that parent (also referred to as the custodial parent). The other parent, however, still has *access* to the child and the right to certain important information about the child such as medical information. Custodial parents must act in accordance to the *Divorce Act*. This means that they must act in a way that encourages the child in his or her relationship with the other parent. More information about parenting arrangements can be found on the [Department of Justice](#) website.

Child Support

The law says that both parents must support their children financially, even when the marriage breaks down. In BC, this legal responsibility to support a child usually lasts until your child is 19. If your child remains a dependent after that age, the obligation may continue.

If a child is living with one parent, the other parent usually must pay support money. Parents must follow rules called the [Child Support Guidelines](#). The Guidelines help set a fair amount of support for children. The Guidelines consider such things as how much money the parent makes and how many children need support. The Child Support Guidelines make sure that children continue to benefit from the financial means of both parents.

When you are deciding on how much financial support the child needs, you must follow the Child Support Guidelines, at a minimum. If you and the other parent can't agree, you may have to go to court, where a judge will apply the Child Support Guidelines.

What if a Parent Refuses to Pay Child Support?

The provincial government has a program called the Family Maintenance Enforcement Program. The people who work in this program can help if a parent is not paying the money the judge said he or she must pay to support the children, or the money that he or she agreed in writing to pay.

If a parent does not pay child support, the Family Maintenance Enforcement Program may take the money directly from the parent's pay cheque or bank account. Other things that may happen if a parent refuses to pay:

- He or she may lose his or her driver's licence
- The Canadian government may take away his or her passport

Wife Assault is a Crime

One woman in 10 in Canada is beaten by a husband or partner. All kinds of men beat women: rich men and poor men, immigrant men and Canadian men.

When one person beats another person, it is a crime. The crime is called assault. It doesn't make any difference if the people are living together. Wife assault is a crime.

If someone complains to the police, such as a neighbour, a relative, or the victim, the police will arrest the man or take the woman to a safe place. A transition house is a safe place. A woman can stay there for up to a month. It is free. For information about the transition house in your community, phone Vancouver and Lower Mainland Multicultural Family Services Society at 604-436-1025, or call the VictimLINK at 1-800-563-0808.

Children Need Protection

Sometimes parents don't take care of children (all those under the age of 19). Maybe they leave the children alone, or hurt them or don't give them enough food.

The law says that if a neighbour, a teacher, a doctor, or a relative knows about this, they must phone a social services office. Then a social worker will visit the family to check on the child. If the social worker thinks that the child is in danger, the social worker can remove the child from the home to a safe place. The social worker and the parents will have to go to court.

The social worker has to prove in court that the child was in danger. The parents have the right to argue that their child should not be taken away from them. The parents should have a lawyer. If they can't afford a lawyer, they should go to a Legal Services Society office before the first court hearing. The law is to protect children. The judge has to decide if the child needs protection. Then the judge will decide what will happen to the child.

Help for Children

Sometimes adults hurt children. Parents, relatives, or other people hit or beat a child. Sometimes an adult does sexual things to a child. This is a form of child abuse. It is against the law.

Visit KidsBC.ca and the [Families Change](http://FamiliesChange.ca) websites for more information. Phone Helpline for Children: 310-1234 (toll-free in BC, no area code needed). You do not have to give your name. Just give the child's name. Say what's wrong. Children of all ages, or parents who want help, can call this number, too. People at this number will get help for the child.

ACTIVITIES

Activity 1: What is a “Family” in Canada?

Give students *Handout 1: What is a “Family” in Canada?* and ask them, “How has the family changed in the past ten years in Canada?” Statistics Canada defines family as married couples with or without children, unmarried couples in common law relationships with out or with children as well as lone or single parents with children.

Today’s Canadian families come in many shapes and sizes: approximately 2.8 million people are in common law relationships, same-sex couples, blended families with at least one step child, extended families with children, parents, grandparents sharing a common home and finances or two income families with or without children.

Activity 2: Legal Requirements of Marriage

Introduce the basics of the legal requirements of marriage and common law partnerships by handing out *Handout 2: Legal Requirements of Marriage* (This includes rights and obligations, essentials such as mental capacity, close relationships, genuine consent, minimum age; formal requirements such as marriage licenses, marriage ceremony, age requirements and registration of the marriage.)

Present students with a case study *Re Al Smadi (1994) 90 Man. R 2d 304* by handing out *Handout 3: Underage Marriage: A Case Study* with accompanying critical thinking questions.

Optional Activity: *Handout 4: Same Sex Marriage Equal Under the Law* and give students about 5 minutes to answer the question. Discuss with students what same-sex marriage is and its impact on Canadian law and society. Facilitate a class debate but remember that this can be a hot topic that has many different opinions based on morals and religion. Gauge the class as you discuss students’ opinions.

The proposition is: Legal same-sex marriage was granted by law on June 2005 by *Bill C-38*. Same-sex couples should have the same rights under the law to marry, have children, divorce, have access to estates after death and be treated equally under the law as heterosexual couples do.

The biggest issue here is that same-sex couples be treated the same under the law to be able to divorce, be part of the estate when a spouse dies and be able to adopt children like any heterosexual couple.

Activity 3: A Simplified Mediation Process- Optional

Provide students with *Handout 5: What Happens When Families Break Up?* and introduce mediation in relation to the family and the advantages of mediation by handing out *Handout 6: A Simplified Mediation Process*. Students will use this handout as a

guide when they are preparing their roles for a simulation exercise on *Handout 7: A Family Law Mediation Simulation*. Place students in groups of three where they will participate in a mock group mediation session. Actual family mediations may bring up some personal issues for students so the case for mediation is not a family case.

Case

Two classmates are in a dispute about an iPhone that was damaged. Joe owns the phone and Sally borrowed it. When Sally returned the phone it did not work. She says it is Joe's lousy phone and he claims that it is all her fault. Joe wants Sally to pay for the repairs and Sally refuses. Both students have been complaining to their other friends so it is becoming an uncomfortable situation at school with so many people involved. It has led to a break in their friendship and name calling. They decide to participate in the school mediation program to resolve the issue.

Activity 4: Discussion and Writing: Family Story

Have students read *Handout 8: Rights of Children and Responsibilities of Parents*.

Cut out a picture of an "average" family from a magazine. Make sure that the people in the picture are not famous or identifiable. Ask the class to make up details about the family members, such as education, occupations, interests, hobbies, and activities. Record these on the board.

Divide the class into small groups and give each group the information below. Ask the groups to discuss what is happening in the family, why it is happening, and what will happen next.

This family has a lot of friends and the children generally do well in school. However, at home, the children have a problem. Their father is very strict and often hits the children when they misbehave. The children are sometimes afraid of him. Their mother worries that he is hitting the children more and more often. The children also witness their father being physically and mentally abusive to their mother.

Using what they have learned in this lesson, students will write an ending to this story. They should consider:

- The fact that children have the right to be protected from harm
- The responsibilities that parents have to protect their children
- The fact that beating one's spouse is not tolerated in Canada and that it is considered reasonable grounds for divorce
- Where to go for help
- What should happen if the family breaks up

RESOURCES

Activity 1: What is a “Family” in Canada?

Handout 1: What is a “Family” in Canada?

Activity 2: Legal Requirements of Marriage

Handout 2: Legal Requirements of Marriage

Handout 3: Underage Marriage: A Case Study

Handout 4: Same Sex Marriage Equal Under the Law

Activity 3: A Simplified Mediation Process

Handout 5: What Happens When Families Break Up?

Handout 6: A Simplified Mediation Process.

Handout 7: Mediation Simulation

Handout 8: Group/Self Evaluation Rubric

Activity 4: Discussion and Writing: Family Story

Handout 9: Rights of Children and Responsibilities of Parents

ASSESSMENT

Activity 1: What is a “Family” in Canada?

Handout 1: What is a “Family” in Canada? can be submitted by students for marking once it has been completed.

Activity 2: Legal Requirements of Marriage

Once students have completed the questions on *Handout 3: Underage Marriage: A Case Study*, it can be submitted for marks.

You can decide if you would like students turn to in *Handout 4: Same Sex Marriage Equal Under the Law* for marking. The main purpose of this handout is to prepare for the class debate. Participation marks may be granted for the debate portion of this activity.

Activity 3: A Simplified Mediation Process

Formative assessments can be done for this activity by using the Tracking Sheet on *Handout 7: Mediation Simulation*. Students will also give an evaluation for their group and themselves using *Handout 8: Group/Self Evaluation Rubric*.

Activity 4: Discussion and Writing: Family Story

Each group can submit their writing assignment for marking once it has been completed. They will receive a group mark.

ENRICHMENT

1. Theodore “Blue” Edwards was a basketball player for the Vancouver Grizzlies in the early to late 1990s. While here in Vancouver, Edwards began an extramarital affair with Kimberly Van de Perre that lasted a few years. Out of that relationship, a child was born. In 1997, Kimberly Van de Perre took Edwards to court to gain sole custody and child support for their son. She was given full custody of the child with four one-week periods of access to the child per year for Edwards.

Edwards appealed the decision. During the appeal, Edwards’s wife, Valerie Cooper Edwards, joined in the request for joint custody because of their son’s relationship with his half twin sisters. The appeal was won by the Edwards family for joint custody with Van de Perre.

The Court of Appeal overturned the lower court’s decision saying that race played an issue in the court’s decision. The judges felt that it was in the best interest of the child to be with his African American roots. Van de Perre was white.

Van de Perre took the matter to Supreme Court of Canada. The Supreme Court overturned the original appeal and went back to the original lower court’s decision of awarding sole custody of the child to Van de Perre.

Van de Perre vs. Edwards 2001 can be viewed at Canlii.org. Review the arguments in the case *Kimberly Van de Perre vs. Theodore Edwards*. Decide on a debate resolution with your group and then debate that resolution.

2. From newspapers, find three articles that relate to family law and marriage.
 - Summarize the articles
 - Highlight the important issues in your own words
 - State and justify your opinion about the issue
3. Debate the following issues:
 - Women should by law be forced to take their husbands’ names after marriage
 - All couples planning to be wed should take family planning and marriage classes
 - Divorce is too easy in Canada