Family Law
What is Family Law?

**Family Law** deals with the various relationships between family members, including husband and wife, parents and children, and more recently same-sex partners.

The need for **family law** usually begins with the **marriage breakdown**—grounds for divorce.

The **Constitution Act, 1867** gives the federal government authority to define the **essentials** of marriage, and provincial governments the jurisdiction over the **solemnization of marriage** (the procedures required for a legal marriage).
Define FAMILY

There is more than one definition!
Pull out your phones and Google away!!!!
Definitions:

Statistics Canada:
“(1) married couples with or without never-married children;
(2) unmarried couples who have lived together for longer than one year; and
(3) lone parent (single parent) with never-married children.”
What are some different family structures?

How and why have they changed?

What are factors that influence such structures and changes?
Family Structures

- **Nuclear**
  - Father, mother, their children

- Today, Canadian families are likely to be any one of the following:
  - Traditional nuclear family
  - Married couple without children
  - **Blended family** (a married or common-law couple with at least one stepchild)
  - **Extended family** (children, parents, and grandparents sharing a dwelling and cooperating economically)
  - Common-law relationships with or without children
  - Single parent with biological or adopted child
  - Same-sex partner relationships
<table>
<thead>
<tr>
<th>Census family</th>
<th>2001</th>
<th></th>
<th>2006</th>
<th></th>
<th>2011</th>
<th></th>
<th>Percentage change 2006 to 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>number</td>
<td>percentage</td>
<td>number</td>
<td>percentage</td>
<td>number</td>
<td>percentage</td>
<td></td>
</tr>
<tr>
<td>Total census families</td>
<td>8,371,020</td>
<td>100.0</td>
<td>8,896,840</td>
<td>100.0</td>
<td>9,389,700</td>
<td>100.0</td>
<td>5.5</td>
</tr>
<tr>
<td>Couple families</td>
<td>7,059,830</td>
<td>84.3</td>
<td>7,482,775</td>
<td>84.1</td>
<td>7,861,860</td>
<td>83.7</td>
<td>5.1</td>
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<tr>
<td>Married</td>
<td>5,901,420</td>
<td>70.5</td>
<td>6,105,910</td>
<td>68.6</td>
<td>6,293,950</td>
<td>67.0</td>
<td>3.1</td>
</tr>
<tr>
<td>Common-law</td>
<td>1,158,410</td>
<td>13.8</td>
<td>1,376,865</td>
<td>15.5</td>
<td>1,567,910</td>
<td>16.7</td>
<td>13.9</td>
</tr>
<tr>
<td>Lone-parent families</td>
<td>1,311,190</td>
<td>15.7</td>
<td>1,414,060</td>
<td>15.9</td>
<td>1,527,840</td>
<td>16.3</td>
<td>8.0</td>
</tr>
<tr>
<td>Female parents</td>
<td>1,065,360</td>
<td>12.7</td>
<td>1,132,290</td>
<td>12.7</td>
<td>1,200,295</td>
<td>12.8</td>
<td>6.0</td>
</tr>
<tr>
<td>Male parents</td>
<td>245,825</td>
<td>2.9</td>
<td>281,775</td>
<td>3.2</td>
<td>327,545</td>
<td>3.5</td>
<td>16.2</td>
</tr>
</tbody>
</table>

Sources: Statistics Canada, censuses of population, 2001 to 2011.
A marriage involves a legally binding contract between two people.

A divorce terminates the contract.

Similar to other contracts, each spouse has rights and obligations:
- Each spouse has a right to live in the family home.
- Spouses have a mutual obligation of financial support and an individual obligation of self-support.
- Spouses have rights to share in an estate; one spouse gains rights to the estate if the other spouse dies.
- If there are children, the partners must determine care, custody, and support in the event of a divorce.
Marriage, what art thy requirements?

**Only the federal and provincial governments have the power of making marriage laws**

Most of the essential requirements of marriage are recognized through common law, and each province has its own *Marriage Act*.

The essential requirements of marriage:

- Mental capacity
- Genuine consent
- Minimum age
- Close relationships
- Unmarried status
Capacity & Consent

**Mental Capacity**

- For a marriage to be legal, each person must have the **mental capacity** to understand the nature of the marriage.
- Someone who lacks **mental capacity** because of illness, drugs, or alcohol cannot legally marry.

**Genuine Consent**

- A marriage is not valid if either person did not freely **consent**, or agree to being married.
- If either person is under **duress** (forced to marry) or if there is a mistake (marrying the wrong twin, communication problems), the marriage is not legal.
In Canada, before the federal Civil Marriage Act was amended in 2015, the **minimum ages** for marriage was 14 years old for males, and 12 years old for females (2 years younger because girls were thought to mature faster). However, the amendments resulted in a set age of 16 as the minimum.

However, each province has its own version of the **minimum age**, all of which are higher than the common law ages (18 & 19), except for Québec (16).

Very young people who wish to be married require their parents’ permission by law.
In Canada, a person cannot marry someone who is closely related to him or her (consanguinity).

<table>
<thead>
<tr>
<th>Relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A man cannot marry his...</strong></td>
</tr>
<tr>
<td>mother</td>
</tr>
<tr>
<td>daughter</td>
</tr>
<tr>
<td>sister or half-sister</td>
</tr>
<tr>
<td>grandmother or granddaughter</td>
</tr>
</tbody>
</table>

| **A woman cannot marry her...** |
| father                 |
| son                    |
| brother or half-brother|
| grandfather or grandson|

Close relationships include adoptions.
Both persons must be unmarried at the time of their ceremony.

In Canada, **monogamy** (being married to one person) is the only legal form of marriage.

**Bigamy** means being married to two people at the same time and is illegal.

**Polygamy** means being married to two or more people at the same time and it is also illegal.

If a person wants to remarry, that person must prove that his or her previous marriage has officially ended.
The formal requirements of marriage, known as solemnization, include:
- issuing a marriage licence or banns.
- performing the marriage ceremony.
- establishing age requirements.
- registering the marriage officially.

The banns of marriage refers to an announcement of an intended marriage read in a couple’s church.

A ceremony may be civil or religious.

Before a wedding, a couple will obtain a marriage licence, and following the ceremony they receive a marriage certificate that registers their marriage.
Requirements: Adult Interdependent Relationships/Cohabiting Relationship/Common-law

- Couple has lived together in a relationship of interdependence (i) for more than 3 years, (ii) of some permanence, if there is a child of the relationship by birth or adoption.
In 2005, the federal government passed the Civil Marriage Act, which changed the previous definition of marriage ("the lawful union of one man and one woman to the exclusion of all others") to include same-sex couples.

The definition now speaks of "the lawful union of two persons" instead of "one man and one woman."

Gay men and lesbian women successfully used their Section 15 Equality Rights in the Charter of Rights and Freedoms to have the definition changed.
A Spouse’s Name

One of the spouses, usually the wife, may choose to change his or her surname.

The options are:

- Assuming the spouse’s surname.
- Assuming a combination of one’s own surname and the spouse’s surname (with a hyphen in between).
- Keeping one’s own surname and not changing it.

Each province has a *Change of Name Act*.

Today, it is common for women to keep their own surnames or combine them with their spouses’ surnames.
Evolution of Laws Relating to the Family

- Divorce Act
- Adult Interdependent Relationships Act, 2002
- Dependents Relief Act
- Married Women’s Property Act, 1882
- Child, Youth and Family Enhancement Act, 2000
- Dower Act
- The Famous Five: https://www.youtube.com/watch?v=if_pyxsdmqY