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Family Law Newsletters

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— **Franks & Zalev - This Week in Family Law**

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Contents

• **There's room for everyone on the Nice List — Buddy the Elf**

There's room for everyone on the Nice List — Buddy the Elf

In recent years, we've used the year end edition of *TWFL* as a platform for discussing our concerns about the state of the family justice system in Canada.

In 2022's final edition, we wrote about the "signs that our already backlogged family justice system is in serious crisis."

In 2023's final edition, we opined that because of ongoing neglect by both levels of government, "the system may be on the precipice of collapse."

And, more recently, in the October 28, 2024 (2024-41) edition, we commented that perhaps the time has come to "just admit that the system, as currently constituted, is beyond repair and cannot be fixed", and we are faced with "a fundamentally broken system largely brought about by the failure of the Federal and Provincial Governments across the country to provide the family justice system (and, to be blunt, the entire justice system) with the air and financial assistance it needs to breath, and to be able to do the incredibly important work it must do."

We're tired of being such downers. It is soul-sucking. So this year, we wanted to end things on a happier note by taking a moment to focus on some of the positive developments in family law.

First and foremost, we want to commend the exceptional mentoring that is being done by of our colleagues in the Family Law Bar on a daily basis. As but one example, almost every single day, the Ontario Family Law Facebook Group, which now has over 2,200 members, contains a desperate plea for help by a young lawyer — usually a sole practitioner — who is faced with a situation that they do not know how to deal with. While almost all of these requests are posted anonymously by lawyers who may be too shy or embarrassed to reveal their names to the group, in the best traditions of the Bar, the questions are always immediately answered with offers of assistance from numerous senior members of the Bar.

And, this willingness to help colleagues in need is not only prevalent in the online world — the vast majority of our colleagues are, at least in our experience, always ready and willing to answer a call for help from another lawyer in need.

We hope to see more of this type of collegiality and kindness in 2025, and less of the toxic behaviour, bullying, and correspondence that some mistakenly seem to think constitutes "effective advocacy" or an acceptable manner of practice. If you see this type of behaviour, call it out in a civil way, rise above, and remember that, as Justice Pazaratz aptly put it almost a decade ago in *S. (J.) v. M. (M.)* (2016), 80 R.F.L. (7th) 386 (Ont. S.C.J.), "Nasty doesn't work", and "Nasty won't be tolerated."

There is also finally some good news to report on the judicial appointments front, where the number of judicial vacancies has now come down from 75 as of February 1, 2024, to just 39 as of December 2, 2024.

While there is obviously still an enormous amount of work to be done, including filling the remaining 39 vacancies and ensuring that future vacancies are filled quickly, 36 appointments in 10 months is certainly movement in the right direction, especially since many of these appointments bring a wealth of expertise in family law to the Bench, including: Justices Justin Roberge and Sophie Leblanc in Quebec; Justice Sean Sinclair in Saskatchewan; Justices Kelli Potter and Robynne Kazina in Manitoba; Justices Shannon Mason, Terrance Sheppard, Christine Doucet, Robin Gogan, and Jillian Barrington in Nova Scotia; Justices Lisa Hamilton and Margot Fleming in British Columbia; and Justices James Mountford, Elizabeth McCarty, Yvonne Fiamengo, Gilead Kay, and Joanna Shaw in Ontario. (Apologies if we missed anyone — as Philip Epstein once said, "If you want to make enemies, list names.")

Additionally, kudos to the Federal Government for appointing Justice Lene Madsen to the Court of Appeal for Ontario. Justice Madsen is the first Unified Family Court judge in Ontario to be appointed to the Ontario Court of Appeal. We have no doubt that Philip Epstein is shepping nachas from high above at seeing Justice Madsen on the highest court in Ontario. (For those who don't speak Yiddish as a first language, "shepping nachas" means taking great pride in someone else's achievements.)

Special thanks to Kristy Warren, the Epstein Cole Knowledge Management Lawyer, for the countless hours spent helping us put TWFL out every week. We are truly grateful.

We'll be off for the holidays for the next several weeks. Our out of office messages will be on, our phones will be off, and we'll be enjoying the stress of spending holiday time with family instead of the stress of fighting about holiday time for our clients. We urge you to do the same. While the work we do is important, so too is spending time with family and friends, and recharging our batteries for the year to come.

We'll be back with the first edition of 2025 on January 13th, where we'll be discussing:

(a) The Ontario Court of Appeal's recent decision about an arbitrator's duty to disclose potential conflicts and the test for reasonable apprehension of bias in arbitrations in *Aroma Franchise Company, Inc. v. Aroma Espresso Bar Canada Inc.*, 2024 ONCA 839. We discussed the lower court's decision to set aside the arbitrator's awards and order a new arbitration before a new arbitrator on the basis of reasonable apprehension of bias in the May 29, 2023 (2023-40) edition of TWFL, but that decision has now been reversed.

(b) The Supreme Court of Canada's decision on December 9, 2024 to dismiss the father's appeal in *Mehralian v. Dunmore* from the bench with reasons to follow. As you may recall from our comment about the case in the February 26, 2024 (2024-08) edition of TWFL, the appeal deals with the appropriate test for determining the habitual residence in cases involving children who were allegedly abducted or withheld from countries that are not signatories to the *Hague Convention*.

Merry Christmas and happy holidays to all, and best wishes to all for a happy and healthy 2025.

Franks & Zalev

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