

FAMLNWS 2025-46

**Family Law Newsletters**

December 15, 2025

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

Aaron Franks & Michael Zalev

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

**Contents**

- Home Alone, But Still Standing

**Home Alone, But Still Standing**

Over the past few years, our holiday messages have tended to be full of doom and gloom. In 2022, we noted signs that our already backlogged family justice system was in serious crisis. In 2023, we warned of impending collapse. By late 2024, we were basically standing on our balcony shouting, "This thing might actually be beyond repair."

So this year, we're changing the script — no more; less Eeyore and more Tigger. After years of warning of institutional doom, we've finally had enough. Instead of releasing another instalment in our morose annual holiday lament, we're turning our attention to what actually went right in 2025 — while still being honest about the parts that absolutely did not.

And let's face it: 2025 was the justice-system equivalent of Home Alone. The system was the child forgotten at home; the politicians were the parents on the plane pretending everything was under control; and the only thing standing between the intruders — delay, underfunding, and infrastructure failures — and total chaos was a combination of improvised fixes, metaphorical duct tape, and the sheer determination of the people inside the house. And somehow, thanks to the bench, the bar, and court staff, the place didn't burn down. A genuine holiday miracle.

**A Year of One Big SCC Decision — and a Long Waiting Game**

The Supreme Court of Canada released only one family law decision in 2025: *Dunmore v. Mehralian* (2025), 15 R.F.L. (9th) 241 (S.C.C.) — about the law of habitual residence in non-*Hague* wrongful removal and retention cases.

Beyond *Dunmore*, however, it was otherwise a year of silence from Ottawa in the family law realm. But *Ahluwalia* — argued before the Supreme Court on February 11 and 12, 2025 — remains under reserve. That does not hint at a unanimous decision. The bar continues to wait (and wait) to see what the court will do with the intersection of family violence, damages, and the limits of tort law in intimate relationships. Depending on what the court decides, we could see the return of conduct as a major financial factor in family law — something that could inject new layers of chaos into an already overburdened system. For now, all we can do is continue to wait.

**Leave to Appeal: A Few Contenders, But Certainly No Guarantees**

Leave to appeal is being sought in several potentially significant family law matters from 2024, including *Kirby v. Woods* and *Mullin v. Sherlock*, which we discussed in the October 6, 2025 (2025-36) and October 27, 2025 (2025-39) editions of *TWFL*, respectively. Whether the Supreme Court will take up either of these cases, or any of the other family law matters for which leave is currently being sought, remains to be seen. Our bet is they won't, but our record of predictions regarding SCC leave applications is up there with the chances of winning the lottery. We'll have to wait and see.

**Appellate Courts Doing the Heavy Lifting**

Provincial appellate courts released a number of interesting and important decisions in 2025, including:

- *Kassabian v. Marcarian* (2025), 16 R.F.L. (9th) 33 (Ont. C.A.) — now the leading case on determining the date of separation (May 12, 2025 (2025-17) edition).
- *Miner v. Cooke* (2025), 19 R.F.L. (9th) 265 (Alta. C.A.) — contempt and remedies for breaches of parenting orders (September 15, 2025 (2025-33) edition).
- *Kirby v. Woods* (2025), 17 R.F.L. (9th) 325 (Ont. C.A.) and (2025), 19 R.F.L. (9th) 1 (Ont. C.A.) — the open-court principle vs. privacy, and the interplay between refugee status and child-abduction (October 6, 2025 (2025-36) edition).
- *Green v. Roome* (2025), 17 R.F.L. (9th) 1 (Alta. C.A.) — child support under section 9 of the *Guidelines* (October 13, 2025 (2025-37) edition).
- *R.L. v. M.F.* (2025), 19 R.F.L. (9th) 39 (Ont. C.A.) — compensatory support and the SSAGs in high-income cases and post-separation increases in income (November 24, 2025 (2025-43) edition).
- *Yang v. Yang*, 2025 CarswellBC 2798 (C.A.) — setting aside divorce orders (December 8, 2025 (2025-45) edition).

### **The Trial Courts: Holding the System Together**

These appellate decisions, however, were only part of the story. All year long, trial court judges across the country issued thoughtful, practical decisions that clarified grey areas, resolved recurring problems, and kept the law moving (mostly) in the right direction. This work is critical. Family law evolves primarily through incremental judgments — the careful, case-by-case refinement that keeps the law responsive to the realities of modern families and social values rather than frozen in outdated assumptions. Without this steady forward movement at the trial level, the rest of the structure simply doesn't hold.

### **Still On Life Support - But That Can Change**

Last year's drop in judicial vacancies felt like a sign that maybe, just maybe, the "parents" of the system had finally remembered the child they left behind. But as of December 1, 2025, vacancies sit at 39, exactly where they were a year ago. Progress hasn't slowed; it has stopped.

The numbers speak for themselves: three vacancies in Alberta, five in British Columbia, three in Nova Scotia, eleven in Ontario, and six in Quebec — a distribution that would strain even a well-resourced system, let alone the one we actually have. (Sorry — there's Eeyore again.) Serious operational issues persist at a number of courthouses, and Ontario — where we primarily practise — continues to wrestle with staffing shortages that make even routine appearances more fragile than they should be.

But that can change. The pieces are in place for Canada to become a world leader in delivering family justice. Canadian judges continue to perform superhuman work under increasingly stressful and unsustainable conditions. Our court staff keep the entire structure from tipping over. And our lawyers continue collaborating, mentoring, and finding creative solutions to difficult problems. *All that's missing is the one the thing only governments can provide: dollars, sustained effort and political will.* With real attention from Ottawa and from the provincial capitals — and the resources that must accompany that attention — Canada could have a family justice system that functions the way Canadians deserve.

And the current state of affairs isn't just inadequate — it's profoundly wasteful. While there are no statistics available (which is, in itself, part of the problem), we cannot even begin to imagine how much money is lost — by families and by the taxpayers — every time a scheduled hearing is cancelled because there isn't a judge, a courtroom, or a court reporter available. Or when a dispute that should be resolved in weeks languishes for months of even years, simply because the system cannot process it. Add to this the costs generated by delay-induced conflict escalation, duplicated legal work, repeated attendances, and the emotional and financial strain imposed on children and parents who are forced to wait endlessly for even routine decisions. None of this is efficient. None of this is responsible stewardship of public resources. And none of it is inevitable.

A functioning family justice system isn't a luxury. It is an essential public service. Family law is where most people experience the justice system. It determines where children will live, how they will be supported, how separating spouses will divide their lives, and how families will move forward after profound upheaval. When the system works, it delivers stability, safety, and predictability at the very moment people need it most. When it doesn't, the consequences — emotional, financial, and societal — are immense. Canada can fix this. We simply need our governments to decide that families — *people* — are worth the investment.

### Special Thanks And Happy Holidays

Special thanks to Kristy Warren, the Epstein Cole Knowledge Management Lawyer, who continues to invest countless hours ensuring *TWFL* is coherent, accurate, and typo-free. Without her, this newsletter would look very different — and not in a very good way.

We will be off for the next few weeks. Our out-of-office messages will be on. Our phones will be off. We encourage you to do the same. **Please take time for yourselves as well.** The work we do is important, but so too is stepping away from it long enough to remember that we are people — people with families, hobbies, and lives. Our work does not and must not define us. Save for the truly deranged, the practice of family law can become all-encompassing. It can eat you alive. If you don't make sure to take time away from this work, you will burn out. Everyone does, eventually, unless they give themselves permission to step back.

It's been a pleasure, as always. Many thanks for the kind comments and constructive criticism received over the past year. We'll be back in January. Until then, Merry Christmas, and a very happy and healthy new year to all.

Newsletteringly yours,

Aaron & Michael

---

End of Document

Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.