

Welcome to the **Lam Family Law Newsletter**, a bi-monthly endeavour with timely and relevant updates on family law and practice.

January 2024 Issue

Case Law Commentary

- **Costs Following Conferences:** In *Mitchell v. Mitchell*, [2023 ONSC 2341 \(WL\)](#), Justice Kraft made a significant costs order following an “unproductive” settlement conference. Check out our blog post: [Costs Following a Conference are Mandatory in Certain Circumstances \(and Can be Substantial\)](#).
- **Intentional Under/Unemployment Due to Reasonable Health Needs:** Parties frequently claim that their health needs prevent or limit their ability to work. In *Mohamoud v Farah*, [2023 ONCJ 103 \(CanLII\)](#), Justice Kapurura reviewed what evidence is required to satisfy the court that a party’s reasonable health needs justify their decision to work less or not work. Check out our blog post: [How to Prove it: What Evidence is Needed to Show Reasonable Health Needs Justify Under/Unemployment?](#).
- **Successful Unjust Enrichment Claim Between Married Spouses:** *Mullin v Sherlock*, [2023 ONSC 4769 \(CanLII\)](#), is a rare case where a married spouse successfully advanced an unjust enrichment claim for significant damages calculated on a joint family venture basis. Check out our blog post: [A Successful Unjust Enrichment Claim Between Married Spouses: Mullin v Sherlock, 2023 ONSC 4769](#).

In Case You Missed It

- [O. Reg. 349/23](#) made miscellaneous changes to the *Family Law Rules*, [O Reg 114/99](#):
 1. [Effective November 27, 2023](#): Various changes were made to Rules [1.1](#) and [9](#) related to the conversion of a paper document to [electronic format](#). Changes were also made to subrules [3\(5\)-\(6\)](#) and subrule [20.2\(14.1\)](#) on [orders to lengthen or shorten time](#).
 2. [Effective January 15, 2024](#): New changes came into effect on a [summons to witness](#) under Rule [23](#). Subrules [23\(3.1\)](#) and [\(3.2\)](#) set out the form and timing requirements for an interprovincial summons to witness. Subrules [23\(5\)](#) and [\(5.1\)](#) provide details on the effect of a summons and set out a written notice requirement if a summons becomes unnecessary.
- Several amendments to the *Rules of Civil Procedure*, [RRO 1990, Reg 194](#), were introduced, [effective January 1, 2024](#). The following changes relate to [appeals](#):
 1. [Rule 61.11\(3\)](#) (for an appellant’s factum) and [Rule 61.11\(5.1\)](#) (for a respondent’s factum) prescribe that Parts I to V shall not exceed 9,200 words and 40 pages, except with leave of the court.

2. [Rule 61.11\(1\)\(e\)](#) (for an appellant's factum) and [Rule 61.11\(3\)\(f\)](#) (for a respondent's factum) expand the contents in the certificate statement to include that the factum complies with the page and word limits, state the number of words contained in Parts I to V, and that the person signing the certificate is satisfied as to the authenticity of every authority listed in Schedule A.
 3. [Rule 61.11\(5\)](#) (for an appellant's factum) and [Rule 61.11\(5.3\)](#) (for a respondent's factum) create a presumption of authenticity for certain authorities, such as those published on government websites, CanLII, or a court website.
- The updated [Guidelines to Determine Mode of Proceeding in Family](#) will take effect on February 1, 2024:
 1. These Guidelines are presumptive. However, [Regional Notices and Directions](#) will also be updated by February 1, 2024, with specific regional directions, including any deviations from these presumptive Guidelines.
 2. All case conferences, settlement conferences, and trial management conferences with a settlement focus will presumptively be held in person. In contrast, trial scheduling conferences, trial management conferences with a focus on preparation for trial, and assignment court attendances will presumptively be heard by videoconference. Check your Regional Notices and Directions to determine if these presumptions apply to you.
 3. Each Unified Family Court location will decide whether first appearance courts will be held in person or virtually. In Ottawa, the court resumed in-person first court dates effective January 3, 2024. They are conducted every Monday and Wednesday morning. For more details (including courtroom numbers and timing), see the Ottawa [Notice to the Profession](#).

Upcoming Speaking Events

- [Vanessa Lam](#) will be speaking at the [Ontario Legal Conference: Family, Estates, and Real Estate Law](#) on February 7-8, 2024. Her topic is "*Divorce Act and Children's Law Reform Act: Where Are We Now?*". If you want a 15% coupon code, please contact [Vanessa](#).
- [Vanessa Lam](#) and [Maria Golarz](#) will be speaking at the [18th Family Law Summit](#) on March 20-21, 2024. Their topic is "Costs: A Whirlwind Tour (But Don't Worry We Give You Precedents)".

Free Resources

- The Ontario Superior Court of Justice recently published [A Guide to Process for Family Cases at the Superior Court of Justice](#) (October 2023). This 89-page guide is a helpful tool that covers timelines, scheduling procedures, online filing, and more.

Sharing Our Newsletter

- If this newsletter has been shared with you by a colleague, and you would like to subscribe, simply click [here](#) or contact [Kayleigh Pink](#).

Our Services

Lam Family Law provides family law lawyers with valuable and strategic advice and research-related services, including:

- ✓ Litigation and dispute resolution strategies, brainstorming potential resolutions, and assessing the strengths and weaknesses of a case
- ✓ Drafting factums, statements of law, annotated case books, submissions, and other court documents
- ✓ Drafting appeal materials (e.g., seeking or opposing leave to appeal, stay pending appeal materials, further evidence on appeal materials, and substantive appeal materials including the notice of appeal and factum)
- ✓ Lengthier legal opinions / research memos
- ✓ Shorter emails / informal memos highlighting legislation / cases / secondary sources

Yours Truly,
The Lam Family Law Team
([Vanessa Lam](#), [Maria Golarz](#), [Rebecca Winninger](#), and [Kayleigh Pink](#))
