

CANADA / JUDGMENT

## Henderson v. Medley

2025 BCSC 2580

### COURT

Supreme Court of British Columbia

### DECIDED

3 December 2025

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2025 BCSC 2580 Henderson v. Medley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Henderson v. Medley,

2025 BCSC 2580

Date: 20251203

Docket: E18985

Registry: Chilliwack

Between:

Christopher Michael Henderson

Claimant

And:

Whitney Amanda Medley

Respondent

Before: The Honourable Justice Lawn

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

W.K. Ashley

Counsel for the Respondent:

J.E. Roberts

Place and Date of Hearing:

Chilliwack, B.C.

December 2, 2025

Place and Date of Judgment:

Chilliwack, B.C.

December 3, 2025

## Introduction

- [1] Mr. Henderson and Ms. Medley agree that they ended a 12-year marriage-like relationship on 5 September 2022. They have no children. Mr. Henderson filed a notice of family claim in 2024, and Ms. Medley has counterclaimed for spousal support. She now brings this application for interim support; Mr. Henderson brings a separate application to dismiss the spousal support portion of Ms. Medley's counterclaim, on the basis that it is statute barred.
- [2] Ms. Medley's notice of application seeks two other orders, for retroactive spousal support and a lump sum interim distribution of property, neither of which was before me on this application.
- [3] I will address the limitations problem first, since if Mr. Henderson is successful, I need not decide Ms. Medley's application.
- [4] In my oral reasons I noted that I might abbreviate certain references for clarity and to save time, and that I reserved the usual right to edit my reasons should a transcript be ordered. These changes have now been made. The result has stayed the same.

## Timeline

- [5] The following dates and events are relevant to the determination which follows:
  - a) 5 September 2022 - This is the date of separation, which date starts the two-year limitations clock at issue here.
  - b) 21 February 2023 - Ms. Medley retained counsel (not counsel on this application).
  - c) November 2023 - Mr. Henderson retained Ms. Ashley, who continues to represent him.
  - d) 1 December 2023 - Ms. Ashley wrote to Ms. Medley's former counsel in a letter mis-dated December 31, informing her that Mr. Henderson had retained her as counsel and asking her to provide the draft separation agreement.

- e) 13 and 14 December 2023 - the two lawyers exchanged correspondence indicating they were engaged in the preparation of financial statements by the clients, preparatory to finalizing the separation agreements.
- f) 9 February 2024 - Ms. Ashley wrote asking for confirmation that she would prepare the draft separation agreement without the parties preparing F8 financial statements. This reflected a desire by the clients to pursue their settlement without preparing formal financial statements.
- g) Between 9 February and 13 June 2024 - Ms. Ashley sent numerous further items of correspondence to counsel opposite; no response was received.
- h) Unknown date before 13 June 2024 - the respondent informed the claimant that a draft separation agreement had been prepared by her lawyer "months ago".
- i) 13 June 2024 - Ms. Ashley wrote to Ms. Medley's former lawyer again, requesting a copy of the draft separation agreement which, she had learned from the parties themselves, had been prepared "months ago".
- j) 1 August 2024 - a legal assistant e-mailed Ms. Ashley back, enclosing a copy of a draft separation agreement, containing the separation date of 5 September 2024. There is no indication as to the involvement of Ms. Medley's lawyer. The correspondence accompanying the settlement draft was not in evidence.
- k) 28 August 2024 - Ms. Ashley prepared a without prejudice letter containing a settlement proposal. It is not stated in evidence but I infer that it was sent to Ms. Medley's lawyer on or about that date.
- l) 29 August 2024 - Mr. Henderson instructed his counsel to file the notice of family claim given the looming limitation date.
- m) 5 September 2024 - this is the date two years past the separation date.
- n) 6 September 2024 - Ms. Ashley sent another letter advising that the settlement proposal was withdrawn, given the expiry of the limitation period.
- o) 19 September 2024 to 13 November 2024 - Ms. Ashley sent several additional letters seeking to discuss settlement; requesting a response; requesting mediation; and advising (again) of Mr. Henderson's position that Ms. Medley was statute barred from pursuing a spousal support claim.
- p) 20 January 2025 - Ms. Ashley wrote to Ms. Medley asking her to accept service of the notice of family claim.
- q) 26 February 2025 - Ms. Medley's lawyer's assistant advised that service would be accepted.
- r) 27 February 2025 - the notice of family claim was served.

- s) 3 April 2025 - a response to family claim and counterclaim was filed and served on April 7.
- [6] The counterclaim has since been amended by Ms. Medley's current counsel, who appeared on this application, but that date is not germane to the determinations which follow.

## Legal framework

- [7] The following sections of the Family Law Act, S.B.C. 2011, c. 25 [FLA] are relevant:

### Time limits

198 (1) Subject to this Act, a proceeding under this Act may be started at any time.

- (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,
- (a) in the case of spouses who were married, the date
    - (i) a judgment granting a divorce of the spouses is made, or
    - (ii) an order is made declaring the marriage of the spouses to be a nullity, or
  - (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.
- (3) Despite subsection (2), a spouse may make an application for an order to set aside or replace with an order made under Part 5, 6 or 7, as applicable, all or part of an agreement respecting property or spousal support no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- (4) The time limits set out in subsection (2) do not apply to a review under section 168 [review of spousal support] or 169 [review of spousal support if pension benefits].
- (5) The running of the time limits set out in subsection (2) is suspended during any period in which persons are engaged in
- (a) family dispute resolution with a family dispute resolution professional, or
  - (b) a prescribed process.

- [8] There are terms contained in s. 198(5) which are defined in s. 1 and relevant to the issues here. They are:

"family dispute resolution" means a process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside court, and includes

- (a) assistance from a family justice counsellor under Division 2 [Family Justice Counsellors] of Part 2,
- (b) the services of a parenting coordinator under Division 3 [Parenting Coordinators] of Part 2,

- (c) mediation, arbitration, collaborative family law and other processes, and
- (d) prescribed processes;

"family dispute resolution professional" means any of the following:

- (a) a family justice counsellor;
- (b) a parenting coordinator;
- (c) a lawyer advising a party in relation to a family law dispute;
- (d) a mediator conducting a mediation in relation to a family law dispute, if the mediator meets the requirements set out in the regulations;
- (e) an arbitrator conducting an arbitration in relation to a family law dispute, if the arbitrator meets the requirements set out in the regulations;
- (f) a person within a class of prescribed persons;

"family law dispute" means a dispute respecting a matter to which this Act relates;

[9] The Limitation Act, S.B.C. 2012, c. 13 is also relevant to this matter. Section 22 specifically pertains to counterclaims. It provides, in part:

### **Counterclaim or other claim or proceeding**

22 (1) If a court proceeding has been commenced in relation to a claim within the basic limitation period and ultimate limitation period applicable to the claim and there is another claim (the "related claim") relating to or connected with the first mentioned claim, the following may, in the court proceeding, be done with respect to the related claim even though a limitation period applicable to either or both of the claims has expired:

- (a) proceedings by counterclaim may be brought, including the addition of a new party as a defendant by counterclaim;
  - (b) third party proceedings may be brought;
  - (c) claims by way of set off may be advanced;
  - (d) new parties may be added or substituted as plaintiffs or defendants.
- (2) Nothing in subsection (1) gives a person a right to commence a court proceeding under subsection (1) (a) or (b) in relation to a claim for contribution or indemnity after the expiry of a limitation period applicable to that claim.
- (3) Subsection (1) does not enable a person to make a claim against another person if a claim by the other person
- (a) against the first mentioned person, and

- (b) relating to or connected with the subject matter of the proceeding,
- is or will be defeated by the first mentioned person pleading a provision of this Act as a defence.
- (4) Subsection (1) does not interfere with any judicial discretion to refuse relief on grounds unrelated to the expiry of a limitation period.
- (5) In any court proceeding, the court may, on terms as to costs or otherwise that the court considers just, allow the amendment of a pleading to raise a new claim even though, at the time of the amendment, a court proceeding could not, under section 6, 7 or 21, be commenced with respect to that claim.

## Issues

- [10] The two-year limitation period set out in s. 198 applies to Ms. Medley's counterclaim. Since the separation date is agreed to be 5 September 2022, the counterclaim ought to have been filed by 5 September 2024. The question is whether there is evidence to show that s. 198(5) applies. This also requires consideration of the definitions in the Family Law Act, which I have set out above.
- [11] I do not understand there to be any dispute that these parties were in a "family law dispute" as that term is defined in s. 1 of the FLA. Nor do I understand the parties to disagree, that former counsel for the respondent and current counsel for the claimant are lawyers who were advising these parties in relation to such a dispute, and so meet the definition of family dispute resolution professionals.
- [12] Thus, the narrow issues which must be determined here are:
- i. Were the parties engaged in using a process to attempt to resolve one or more of the disputed issues outside court?
- ii. If not, ought I to exercise my discretion to allow the respondent to bring a counterclaim nonetheless in reliance on s. 22(1)(a) of the Limitation Act?

## Discussion and Decision

- i. "Engaged in using a process"
- [13] The case law, which both parties took me through and which I have further reviewed, is of some assistance in determining what "engaged in a family dispute resolution" means.
- [14] The leading case is the decision of Mr. Justice Butler, as he then was, in *Welliver v. Hees*, 2016 BCSC 1837, which considered s. 198(5) at first instance. He determined that s. 198(5) furthers the FLA's object of dispute resolution over litigation, but imposes structure upon that by requiring the involvement of family dispute resolution professionals. Justice Butler also noted that s. 198(5) provides that the suspension of time, if any, is just for the period of that engagement: see para. 35.

- [15] Justice Butler observed that normally both sides must have retained counsel to fulfil the "with a family dispute resolution professional" part of the requirement, although he did not discount the possibility of just one lawyer being involved, depending on the facts: see para. 32.
- [16] Of greater difficulty is interpreting the period of time during which "persons are engaged in family dispute resolution". Butler JA noted that this requires persons - plural - to be engaged, a point emphasized by Mr. Henderson in his submissions (see also *Cao v. Wu*, 2021 BCSC 785 at para. 18). Justice Butler stated: "it is not sufficient if one of the spouses is trying to resolve the dispute while the other is not; the engagement of both is required".
- [17] Justice Butler described it as "obvious" that there can be difficult questions of fact arising from this provision. That is, in some cases it may be difficult to determine whether both parties are engaged in dispute resolution with a professional.
- [18] The facts in *Welliver* itself are instructive in this regard. There, each party saw a lawyer for a period of time around June of 2010, when Ms. Welliver retained counsel and attempted to start discussions, which did not proceed despite Mr. Hees also getting counsel. The parties appeared to re-start negotiation in 2011, but without the benefit of lawyers, such that there can have been no engagement with a family dispute resolution professional at that time. The next involvement of lawyers was two years later, when the notice of family claim was issued. Justice Butler stated:
- [41] Ms. Welliver indicated from time to time that she wanted a separation agreement and she undoubtedly had in mind the advice she received from the lawyer she hired in 2010. However, it would be a tremendous stretch to say that the parties were engaged in family dispute resolution with a family dispute resolution professional. Rather, each had received some legal advice and they were moving forward with their affairs. They resolved some issues but did so without any documentation or precise terms. Throughout this time Mr. Hees continued to insist that he would not pay spousal support.
- ...
- [43] When I examine all of these facts, I conclude that the parties were engaged from time to time in attempting to resolve their family dispute. However, between March 2010 and March 2013, Mr. Hees was never actively engaged with a family dispute resolution professional. Assuming that time is suspended if one party is working with counsel while the spouses are actively trying to resolve their dispute, then I would conclude in these circumstances that the parties were engaged in doing so for a relatively short period of time around June of 2010 when Ms. Welliver retained counsel. That time could be no more than two or three months. After that, the parties had no engagement with a family dispute resolution professional for the purpose of resolving their dispute until the notice of family claim was issued.

- [19] Thus the period in which both parties had counsel and were exchanging offers and so could be said to have been "actively trying to resolve their dispute" in Welliver, as Butler J. put it at para. 43, was no more than two to three months, which was insufficient in that case to push the limitations clock out far enough. At para. 44, Justice Butler explained why knowing the actual period of active engagement was important, based on the purpose and rationale of the provision in s. 198(5). If it were sufficient to suspend the time for parties to simply hire counsel and attempt to start settlement discussions, there would in many cases be an ongoing suspension of the running of time, which is not the regime that s. 198(5) intended to establish. The parties must truly be actively engaged with professional assistance in trying to resolve their dispute. The evidence of this activity is therefore crucial.
- [20] The cases post-2016 do not cast any doubt on the above principles or on Butler J.'s application of the law to the facts before him. It is clear that whether s. 198(5) applies here depends on questions of fact which Butler J. described as potentially difficult.
- [21] Ms. Medley's former lawyer's understanding as expressed in her affidavit, was that prior to the expiry of the limitation period in September of 2024 she did not file a claim for spousal support because it was her view that the limitation period had been extended, because both parties had counsel and settlement discussions were underway. That is not, however, what the Act requires. It requires the parties to be engaged in using a process to attempt to resolve one or more of the disputed issues outside court with a family dispute resolution professional.
- [22] The language of subsection (c) provides some indication of what is meant by "process" in this context. It states: "mediation, arbitration, collaborative family law, and other processes". In my view, in order to be a "process" the parties must do more than engage counsel and embark on a settlement discussion: see Welliver at para. 43. They must at the very least both take active steps together with their family dispute resolution professionals to move negotiations forward, in an organized and concrete fashion, such as for example by exchanging draft settlement agreements, having meetings or discussions between counsel, reporting back to clients, exchanging further drafts, finding areas of agreement, focusing on areas of disagreement and generally progressing through their negotiations.
- [23] The facts in this case show that this was not done:
- a) First: both parties were not engaged, apart from a brief period in and around December 2023, when there was an exchange of letters. There appears after that time to have been an agreement to proceed without preparing formal F8s, on or around 9 February 2024. After the December 13 letter, however, the correspondence was completely one-sided. There is no further specific evidence of what steps were being taken as part of the "process" the parties were engaged in. The most generous interpretation of the evidence is that the "process" continued until the draft separation agreement was in preparation, which was at some unknown date between 9 February 2024 and 13 June 2024. Thus the longest possible reading of the involvement of both parties, is approximately six months from 13 December 2023 to

13 June 2024, although the evidence is that by June 2024, the draft had been prepared "months before."

- b) Second: there was no evidence of a "process". Counsel had been engaged and a draft settlement agreement had been discussed but any further progress had stalled, perhaps as early as 9 February 2024, or at the very latest by June 2024.
  - c) Third: I cannot find that the 1 August 2024 draft sent across by a legal assistant is part of the s. 198 "process". There is nothing in the evidence to indicate that a lawyer was involved; the assistant is not a family dispute resolution professional. No one gave evidence of any phone calls, for example, between the lawyers at this or any other time.
  - d) The remaining communications were all one-sided, coming from Ms. Ashley. Ms. Medley's lawyer's evidence contains a statement that a settlement proposal was advanced by the respondent and a counterproposal by the claimant, with no date or details. I assume she is referring to the copy of the draft settlement agreement sent to Ms. Ashley by her assistant in June, which I have just addressed; and Ms. Ashley's letter in August, which is another example of one party being engaged or attempting to become engaged in a process: it is not evidence of "persons" being engaged in a process.
- [24] In any event, Welliver and the Act make it clear that even if there is postponement, it is only for the length of time that the parties are "engaged in a process ". The only possible period during which there could, on a most generous reading, be said to be such engagement, was in December of 2023 and for a few months following. There is evidence of one-sided communications from Mr. Henderson's counsel throughout, but this does not reveal a "process" to attempt to resolve one or more of the disputed issues outside court.
- [25] Ms. Medley argues that if the requirements of s. 198(5) are found to be met in this case, it will set a useful precedent that if negotiations are continuing, parties are encouraged to continue negotiating rather than rush into court to get bogged down in the court process. Resolution outside of court is of course a desired outcome, but the key point in Ms. Medley's submission is "if negotiations are continuing". I simply cannot find on these facts that they were. The Family Law Act has set up a regime for the suspension of the limitation period - which is itself in place for policy reasons which are laudable and well known - and that regime was not followed by these parties in this case.

## ii. Section 22 of the Limitation Act

- [26] Despite the expiry of the limitation period in s. 198, however, the respondent may still succeed through the operation of s. 22(1)(a) of the Limitation Act, the text of which I have set out above.

- [27] Justice Shergill discussed and applied s. 22 in *Tilbe v. Nesplak*, 2021 BCSC 2250 noting that the FLA is silent with respect to counterclaims specifically. The issue was also addressed in *Kasian Estate v. Kasian*, 2021 BCSC 538 which although an estate action, deals with the applicability of s. 22 to a family law matter at para. 30 and following. It was also considered in *Halan-Harris v. Blain*, 2023 BCSC 2128, which concerned an amendment of a counterclaim to add new claims.
- [28] There, Justice Forth cited the factors from both *Tilbe* and *Chouinard* as to the Court's discretion to allow a late counterclaim amendment under s. 22, and stated:
- [69] In *Tilbe*, the Court concluded that the respondent should be permitted to file their counterclaim despite the expiry of the limitation period. Justice Shergill considered the length of delay, the reasons for the delay, the prejudice to the party seeking to bring the claim, and the connection between the existing claim and the proposed new cause of action.
- [70] The general principles in considering whether proposed amendments should be granted are set out in *Chouinard v. O'Connor*, 2011 BCSC 902, *aff'd* 2011 BCCA 161:
- [11] The factors to be considered in all amendment applications are applicable in this case as well. General principles are these:
1. amendments should be permitted as necessary to determine the real question and issues between the parties;
  2. the party is not required to [adduce] evidence in support of a pleading before trial;
  3. on an application to amend, the facts alleged are taken as established; and
  4. the discretion is to be exercised judicially in accordance with the evidence adduced and the guidelines of the authorities.
- [71] As cited in *Tilbe*, the Court in *Chouinard* listed the factors that must be considered as part of the analysis of whether an amendment, which pleads a new cause of action, should be allowed after the expiration of the relevant limitation period:
- [12] It is clear that the discretion is not an unfettered one and must be exercised in accordance with the following guidelines, to which I am required to have regard:
1. the extent of delay;
  2. the reasons for the delay;
  3. the degree of prejudice caused by the delay; and
  4. the extent of the connection if any between the existing claims and the proposed new cause of action.

## Discussion

- [72] Based on the authorities of *Kasian Estate* and *Tilbe*, as well as the wording of s. 22(1) of the Limitation Act, I am persuaded that I retain the discretion to consider whether an amendment to a counterclaim should be permitted when s. 198(2) of the FLA applies and there has been no suspension under subsection (5). I note that the claimant only referenced the J.D.G. decision from 2016, and not these later decisions from 2021.
- [29] Counsel submitted that although *Halan-Harris* involved an amendment to a counterclaim to add new claims, *Tilbe* did not, yet *Shergill J.* considered the factors relevant to amendments as those set out in *Chouinard*. I do not think much turns on the distinction. Justice *Shergill* in *Tilbe* described them as similar. In *Halan-Harris*, *Forth J.* determined that there was a connection on the facts before her given that the counterclaims about property and debt all flowed from the claim in the notice of family claim that the parties were spouses.
- [30] I accept that s. 22 applies in this case. The decision as to whether to allow a counterclaim to be filed once the applicable limitation period has expired is discretionary, the discretion is not unfettered and must be exercised judicially with regard to the factors set out in the cases and an examination of the circumstances. As *Ms. Medley* observed in her submissions, the factors are not mandatory. They are to be weighed, as *Shergill J.* did in *Tilbe*.
- [31] I will address each of the factors here in turn.
- [32] First, the length of the delay in this case is seven months from the expiry of the limitation period; but 35 days from the service of the notice of family claim, which is just over the period provided for in Family Rule 4-4. This is not insignificant but does not weigh heavily in the analysis.
- [33] Second, there was no reason given for the delay between the service of the notice of family claim and the filing of the counterclaim. I observe here that there was some discrepancy as to a date of September 5 or 25 in terms of the separation date, but I have assumed for the purposes of these reasons that September 5 is the agreed-upon date and in my view nothing turns upon the distinction. The evidence with regard to the period before 25 September 2024, was that former counsel for *Ms. Medley* believed that the parties were negotiating during that period, and that this is why she did not file a counterclaim. There is nothing to indicate what was happening in the period immediately after the service of the notice of family claim. Both parties were aware of the timeline and the date of separation was not in dispute, given that it appeared on the draft which had been prepared by *Ms. Medley's* counsel between February and June 2024. There was no issue of the respondent being able to afford counsel, as in *Tilbe*. She was represented throughout. I observe that between August of 2024 and January of 2025 *Mr. Henderson* through his counsel did continue to make overtures towards settlement of all issues, including spousal support, even after clearly stating his position that the claim was statute barred. There is no suggestion that these were done out of an intention to lull the respondent into a continued failure to bring her counterclaim.

- [34] I also observe that the notice of family claim was filed but not served for several months. As he testified in his affidavit, Mr. Henderson filed the notice of family claim in order to preserve his claim given the passage of time and the looming limitation period.
- [35] There is no suggestion here, that Mr. Henderson was lying in the weeds, intentionally filing at the eleventh hour so as to prevent Ms. Medley from having the opportunity to file a counterclaim for spousal support if she wished. This is the kind of mischief that s. 22 was put in place to prevent: see *Phaneuf v 0896459 B.C. Ltd.*, 2024 BCSC 1343 at para 79. Indeed the evidence is to the contrary: Mr. Henderson made repeated efforts to engage Ms. Medley in settlement discussions throughout and was met with long periods of silence. A without prejudice offer was sent across on 28 or 29 August 2024, a week before the expiry of the limitation period.
- [36] Third, the extent of the connection between the counterclaim and the claim, if any, was dealt with in *Tilbe*. While Ms. Medley submits that "all the issues between the parties are family law issues", it cannot be sufficient simply for a counterclaim to be brought under the Family Law Act for it to be deemed to be "related" to another claim brought by notice of family claim. If it were so, the limitation period for family law counterclaims would essentially evaporate. This is particularly problematic given the very clear regime set up by s. 198 for the limitation of family law claims and, as Mr. Henderson submitted, spousal support has its own set of limitation rules. That said, there may be facts which render a spousal support claim very much related to one for property division, depending on the situation of the parties.
- [37] In *Tilbe*, Justice Shergill examined the issue of connection and found on the facts before her that the claims for spousal support and property division made in the counterclaim in that case were "distinctly different", saying:
- [106] The final consideration relates to the extent of connection between the existing claim and the proposed new cause of action. This factor weighs in favour of the claimant. The spousal support sought in the Counterclaim is distinctly different than the claim in the NOFC, which was restricted to a claim for division of family property and family debt. While claims advanced under the NOFC and the Counterclaim all flow from the parties' lengthy relationship and its dissolution, the considerations that apply for a property and debt dispute are distinctly different than a claim for spousal support. Nevertheless, this lone factor does not outweigh the various other factors favouring the respondent.
- [38] Despite this, she did consider that she had the discretion to exercise under s. 22, and found that the different nature of the claims did not bar her from allowing the amendment, given the strength of the other factors.

- [39] In this case, the spousal support claimed in the counterclaim is a bare claim for Guidelines support. I was not taken to any evidence that indicates that it is particularly factually connected to any of the family property claims. The mere fact that the spousal support claim flows from the parties' relationship is, in my view, a weak connection indeed. In this respect, the case is similar to *Tilbe*, where the claims were held to be "distinctly different".
- [40] Fourth, the final factor is prejudice. Ms. Medley is clearly prejudiced by the operation of the limitation period in s. 198: she will be unable to bring her spousal support claim. I cannot weigh the strength or value of the spousal support claim at this juncture but I observe that in *Tilbe*, this factor weighed heavily in the context of a 25-year relationship and a 62-year-old spouse. By contrast, Mr. Henderson and Ms. Medley were together for just 12 years; Ms. Medley is young, employed, and could not have expected to have relied solely on spousal support indefinitely going forward. Thus this factor has less impact than it might in another case. Mr. Henderson submits that he too will be prejudiced if the counterclaim is allowed to go forward.
- [41] Weighing these four factors it is my determination that the respondent ought not to be permitted to bring her counterclaim at this point. There is no strong factor weighing in the respondent's favour to tip the balance, as there was in *Tilbe*.
- [42] Many cases in the context of s. 198 of the Family Law Act describe the results of the operation of the limitation period as "harsh". But the policy reasons for limitation periods operate within the family law context just as they do in litigation generally. Unfortunately Ms. Medley's claim for spousal support is out of time.

## Conclusion

- [43] Thus notwithstanding Mr. Roberts' able submissions to the contrary, I grant the claimant's application dismissing those portions of the amended counterclaim which seek spousal support, on the basis that they are statute barred.
- [44] Given this result I need not go on to determine interim spousal support, and so the respondent's application is dismissed.
- [45] Mr. Henderson having been successful, is entitled to his costs at Scale B, subject to any further submissions from counsel.
- [46] I would be remiss if I did not thank counsel again for their able presentation and preparation, which enabled me to prepare and deliver these reasons swiftly.

THE COURT: Counsel, if you have nothing further, this concludes my oral judgment in this matter. Ms. Ashley?

CNSL W. ASHLEY: Thank you. Justice, just to clarify, the costs order, costs of this application on Scale B, not payable forthwith, in the cause?

THE COURT: Not payable forthwith. Thank you.

CNSL W. ASHLEY: Thank you.

THE COURT: Mr. Roberts, anything?

CNSL J. ROBERTS: No, no, thank you, Justice, for your time in this matter.

THE COURT: Thank you very much again to both of you.

"Lawn J."

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