

CANADA / JUDGMENT

Malamas v. Wey

2026 ONCA 133

COURT

Court of Appeal for Ontario

DECIDED

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Malamas v. Wey

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Tulloch, Michael H.; Roberts, Lois B.; George, Jonathon C.

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COURT OF APPEAL FOR ONTARIO

CITATION: Malamas v. Wey, 2026 ONCA 133

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Tulloch C.J.O., Roberts and George JJ.A.

BETWEEN

Konstantina Malamas

Appellant

and

Eberhard Wey, Guenter Wey, and Ingrid Wey

Respondents

Konstantina Malamas, acting in person

Gregory E. McConnell, for the respondents

Heard: October 2, 2025

On appeal from the order of Justice Alexander Sosna of the Superior Court of Justice, dated May 29, 2023.

Tulloch C.J.O.:

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I. INTRODUCTION [1] This appeal concerns whether the motion judge erred in granting summary judgment dismissing the appellant's action. The central issue is whether the record disclosed genuine issues requiring a trial in relation to the claims against her former husband, Eberhard Wey ("Eberhard"), in light of the allegations and evidence of intimate partner violence. For the reasons that follow, I conclude that summary judgment was not appropriate as against Eberhard. However, I would not interfere with the motion judge's determination that the

appellant's claims against Guenter and Ingrid Wey (the "parents") are barred by a prior consent order.

- [2] The appellant commenced this action in August 2022. She seeks damages for emotional distress and for alleged financial deception relating to the ownership of the former family home. Her pleadings allege that during the marriage, she was subjected to intimate partner violence and that the violence formed part of the broader context in which the alleged financial misconduct occurred. Eberhard admitted on cross-examination that he assaulted the appellant and their daughter during the marriage. Other allegations remain disputed and are not determined on this appeal.
- [3] The respondents moved for summary judgment. The motion judge dismissed the action, holding that the claims were limitations-barred, precluded by *res judicata*, constituted an abuse of process, and, with respect to the parents, were barred by a 2017 consent order entered in related family proceedings.
- [4] In my view, the record raises genuine issues requiring a trial in relation to the application of the Limitations Act, 2002, S.O. 2002, c. 24, Sched. B (the "Limitations Act, 2002"), and the doctrines of *res judicata* and abuse of process as they relate to the claims against Eberhard. The allegations and evidence of intimate partner violence form part of the context relevant to those issues. On this record, they could not be finally determined on a summary judgment motion.
- [5] By contrast, I am not persuaded that the motion judge erred in interpreting the 2017 consent order as barring the appellant's present claims against the parents.
- [6] Accordingly, for the reasons below, I would allow the appeal in part. The order granting summary judgment to Eberhard is set aside and the action against him is remitted for trial. The appeal is dismissed with respect to the claims against the parents.

II. background [7] The following account of the factual background is based on the record before the motion judge. Unless otherwise indicated, it is drawn from Eberhard's admissions made in his cross-examination. It is intended solely to address the issues raised on this appeal and the genuine issues requiring a trial on the summary judgment motion. It is not intended to bind the ultimate trier of fact.

- [8] The appellant deposed that her marriage began with the promise of a home. During her engagement, and while she was pregnant with their daughter, her then-fiancé, Eberhard, told her that his parents would purchase a home for the couple. At that time, the appellant was employed full-time and had savings of her own. She deposed that she accepted his proposal because he told her that his name would be placed on title and that she understood the home to be a gift to both spouses. He acknowledged in his cross-examination in these proceedings that she had no reason to distrust either him or his parents at that time.

- [9] According to Eberhard, the home was, in fact, purchased by his parents in their own name and he was never registered on title. Although he admitted to knowing this, he stated that neither he nor his parents ever disclosed this fact to the appellant.
- [10] The appellant deposed that after they moved into the home, and during their nine-year marriage, Eberhard engaged in violence towards her and at least one of their two children. He physically assaulted her on multiple occasions over the course of their marriage – assaults which he admitted in cross-examination, and which were documented in contemporaneous emails. As he further admitted, he once placed his hands around the neck of their young daughter, then nine years old, and threw her to the ground. The appellant deposed that he also assaulted their son, an even younger child, and that he threatened violence against both her and her children.
- [11] In his affidavit on the summary judgment motion, Eberhard alleged that the appellant was physically violent toward him. This allegation was not admitted, is disputed, and is not determined on this appeal. I note only that the record contains reasons to approach Eberhard's affidavit evidence on this point with caution. For instance, while Eberhard denied in the affidavit that he assaulted his daughter, he admitted that assault only months later in cross-examination. These inconsistencies confirm my ultimate conclusion that this matter requires a trial.
- [12] There is also evidence supporting a triable issue that the violence occurred alongside Eberhard's financial deception and financial control. During the marriage, the appellant paid for the utilities and groceries, as well as daycare and extracurriculars for their children – all of which drained her savings. The appellant deposed that Eberhard told her to cover those expenses on the basis that his parents had purchased the home for the couple, adding that he and they were continuing to pay the mortgage, property taxes, and home insurance. The appellant's position is that, in fact, the home was owned by his parents and that its ownership was not disclosed to her during the marriage.
- [13] In summer 2016, the appellant reported Eberhard's assaults to police. Within weeks of that police report, Eberhard provided her with a letter from his parents' lawyer asserting that they were the sole owners of the home and directing her to vacate it by early fall. The letter asserted that she had no right to remain in the home and referred to her not having renovated the property or paid property taxes. In fact, she had attempted to perform renovations but, as Eberhard admitted, he prevented her from doing so. As noted above, she deposed that Eberhard also induced her to pay household expenses in exchange for him covering property tax payments towards a home which, she believed, belonged to both of them.
- [14] It is uncontested that this revelation in 2016 came as a shock to the appellant. Despite hand-delivering his parents' threat to expel her from the family home that she had lived in for nearly a decade, Eberhard admitted that neither he nor his parents ever discussed with her where she would live or how she would care for or house the children.

- [15] The appellant further attested that she faced grave threats to her and her children's safety following her police report. She deposed that, in December 2016, Eberhard threatened to burn the house down with her inside if she pursued a claim against the property, warning her that "I might get so angry that I might hurt the kids."
- [16] In addition to this evidence of threats and pressures, the record provides some support to the appellant's position that she had to care for both her children and for herself in challenging circumstances. After Eberhard left the home, the appellant became the children's sole provider and caregiver. There is evidence that she took responsibility for ensuring that her children received mental health care for the violence they suffered and witnessed, and also sought trauma therapy for herself at the recommendation of the Office of the Children's Lawyer ("OCL").
- [17] In these circumstances, the appellant retained counsel and brought an application in family court seeking immediate and other relief. Her January 2017 application against the respondents sought interim possession of the family home, immediate child support, and a temporary protection order against Eberhard with no-contact terms and restrictions on unsupervised access to the children. The application referenced intimate partner assault and financial deception to support this requested relief, but did not specifically assert additional damages claims.
- [18] In August 2017, the appellant entered into a consent order with the respondents. In exchange for a \$50,000 cash payment, interim child support payments, and terms restricting Eberhard to supervised access, the appellant agreed to vacate the family home and accepted that the parents would no longer be required to participate in the family proceedings. The order also provided that "[a]ll claims between" the appellant and the parents "are dismissed without costs," but did not dismiss or release any claims against Eberhard.
- [19] The appellant's materials describe efforts over the next five years to recover from the alleged violence and to stabilize her and the children's circumstances. She states that they experienced housing and financial insecurity as she, now the primary provider, struggled to find employment adequate to support and house her children. She also arranged mental health and social care for herself and the children, particularly her son who was experiencing behavioural challenges which she said were linked to exposure to family violence. She remained engaged in a series of child-related investigations and proceedings, including supervised access arrangements, child-safety assessments, and involvement by the Children's Aid Society and the OCL.
- [20] In August 2022, the appellant again turned to the courts. She brought the present action against Eberhard and his parents for financial deception. Her statement of claim seeks damages for the financial and emotional harm she suffered, including the loss of the family home. Pleadings of violence and abuse infuse the statement of claim, which alleges that these wrongs combined with the financial deception to intensify emotional distress.

[21] The respondents moved for summary judgment. They argued that the action was out of time, that it was precluded by *res judicata* and constituted an abuse of process, and that it contravened the consent order. The motion judge accepted the respondents' submissions, dismissed the action, and ordered the appellant to pay the respondents \$27,000 in costs.

III. ANALYSIS [22] The appellant argues that the motion judge prematurely dismissed her claims on summary judgment. She argues that he did not adequately account for the allegations and evidence of intimate partner violence, and that this oversight affected his analysis of limitations, *res judicata*, and abuse of process. I accept this submission as to the claims against Eberhard and conclude that the appellant has shown genuine issues requiring a trial in relation to those claims. However, I would defer to the motion judge's determination that the claims against the parents are contractually barred.

[23] The appellant's submissions also invite the court to consider settled legal principles concerning intimate partner violence. I do so only to the extent that those principles assist in addressing the issues raised on this appeal – in particular, the application of the Limitations Act, 2002 and of *res judicata* and abuse of process in light of the dynamics and consequences of alleged abuse.

A. The Appellant's Claims Against Eberhard 1. The Motion Judge Overlooked the Context of Intimate Partner Violence [24] This section proceeds in three steps. First, I outline the judicial obligation to be "particularly attentive" to the ramifications of intimate partner violence on the issues before the court: *R. v. Bérubé* (1999), 215 N.B.R. (2d) 341 (C.A.), at para. 21. Second, I explain what that approach entailed on this record. Third, I turn to the motion judge's error in failing to apply that approach on the summary judgment motion.

a. Particular Attentiveness to Intimate Partner Violence [25] The courts have recognized that allegations and evidence of intimate partner violence may be relevant to the adjudication of civil claims and to the application of procedural doctrines. In *R. v. Lavallee*, [1990] 1 S.C.R. 852, at p. 872, the Supreme Court acknowledged the legal significance of such violence and its effects.

[26] Where allegations of intimate partner violence are raised on the record, courts must consider them where they are relevant to the issues before the court. This includes assessing whether they bear on the factual context in which claims arose or on the application of doctrines such as limitations, *res judicata*, or abuse of process. A failure to engage with relevant evidence may constitute an error warranting appellate intervention: *Dunmore v. Mehralian*, 2025 SCC 20, 503 D.L.R. (4th) 686, at para. 73; *Shipton v. Shipton*, 2024 ONCA 624, 5 R.F.L. (9th) 17, at paras. 35-41.

- [27] The jurisprudence further recognizes that intimate partner violence may involve patterns of conduct and may have consequences beyond individual incidents, including psychological and economic effects. These considerations may form part of the broader factual matrix relevant to the issues in dispute: see *R. v. Bates* (2000), 146 C.C.C. (3d) 321 (Ont. C.A.), at para. 30; *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, 167 O.R. (3d) 561, at paras. 91-92, leave to appeal granted and appeal heard and reserved February 11-12, 2025, [2023] S.C.C.A. No. 529.
- [28] Allegations of this nature must be assessed based on the evidentiary record and the applicable legal principles, without reliance on assumptions or generalizations: *Lavallee*, at pp. 872-73; *K.M.N. v. S.Z.M.*, 2024 BCCA 70, 98 R.F.L. (8th) 275, at para. 122. For instance, courts have cautioned against assuming that only physical violence is serious, that victims always leave promptly or disclose immediately, or that abuse merely reflects “high conflict” relationships or relationship breakdown: *R. v. Finnessey* (2000), 135 O.A.C. 396 (C.A.), at para. 16; *Lavallee*, at pp. 871-73; *R. v. Kormendy*, 2019 ONCA 676, 147 O.R. (3d) 701, at paras. 58-60.
- b. Approaching this Case with Particular Attentiveness [29] In this case, proper consideration of the appellant’s claims required engagement with the allegations and evidence of intimate partner violence to the extent that they were relevant to the issues raised on the summary judgment motion. The following discussion identifies aspects of the record and governing legal principles which bear on that assessment. This discussion is not intended to resolve disputed facts. Rather, it is meant to explain why the allegations and evidence of intimate partner violence formed part of the context relevant to the motion judge’s analysis.
- [30] First, the appellant’s evidence includes allegations that the violence and threats attributed to Eberhard formed part of a broader pattern of conduct that affected her circumstances and decision-making. In *Kormendy*, this court recognized that intimate partner violence may involve efforts to control or intimidate a partner: at paras. 57, 60-61. On this record, the appellant alleges physical assaults, threats directed at her and the children, and related conduct. These allegations are not findings of fact. However, they form part of the evidentiary context relevant to assessing whether there are genuine issues requiring a trial, including whether the appellant was realistically able to advance civil claims at earlier stages.
- [31] Second, the record contains evidence of alleged harms extending beyond physical injury, including fear, trauma, financial insecurity, and alleged financial control. The jurisprudence recognizes that intimate partner violence may have psychological, economic, and relational effects that persist over time: see *Dunmore*, at para. 57; *R. v. Fraser*, 2016 ONCA 745, 33 C.R. (7th) 205, at para. 30; *Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763, at paras. 85-86, 95, per Martin J. (concurring). Whether these alleged harms are established is a matter for trial. However, at the summary judgment stage, the analysis must take into account the possibility that such circumstances may bear on the issues raised.

- [32] Third, the appellant's theory is that the alleged violence, threats, and financial conduct formed part of an interconnected course of conduct. Courts have recognized that intimate partner violence may involve multiple forms of conduct occurring over time, rather than isolated incidents: *Bates*, at para. 30; *Ahluwalia*, at paras. 91-92. These principles are relevant to assessing the evidentiary record and determining whether the claims can properly be resolved on summary judgment.
- [33] Fourth, the appellant alleges that the violence and related conduct occurred within the context of an intimate relationship and its breakdown, including allegations of threats connected to her housing circumstances. The jurisprudence recognizes that violence within intimate relationships – especially when it occurs within the home – may have particular legal and factual significance, including where it affects a party's security, autonomy, or living arrangements: *R. v. Brown*, 1992 ABCA 132, 73 C.C.C. (3d) 242, at para. 21; *R. v. Cunningham*, 2023 ONCA 36, 166 O.R. (3d) 147, at para. 34.
- [34] Fifth, the record also includes evidence relating to the appellant's caregiving responsibilities for children who were allegedly exposed to violence. The Supreme Court has recognized that children's exposure to intimate partner violence may have significant developmental and psychological consequences: *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at paras. 143, 147. Evidence relating to caregiving responsibilities and their effects may be relevant to assessing the appellant's circumstances during the relevant period. The appellant's position is that these circumstances affected her ability to pursue civil claims at earlier stages. This submission is not determined on this appeal. However, it forms part of the factual context relevant to whether there are genuine issues requiring a trial.
- c. Application [35] I turn to whether the motion judge properly considered the appellant's claims against Eberhard in light of the evidentiary record and the applicable legal principles. In my view, the failure to account for the context of intimate partner violence which I have described above affected the assessment of the limitations defence and the application of *res judicata* and abuse of process. As a result, those issues could not properly be resolved on summary judgment on this record.
- [36] I acknowledge that the motion judge provided detailed reasons and addressed many of the arguments raised by the parties. He also took steps appropriate to ensuring that the self-represented appellant was able to present her position.
- [37] However, the motion judge did not address the allegations and evidence of intimate partner violence in assessing the procedural doctrines relied upon by the respondents. In particular, his characterization of the pressures faced by the appellant following the breakdown of the relationship as "not uncommon" did not account for that evidence or its potential relevance. This omission affected the analysis of the limitations defence and the application of *res judicata* and abuse of process. A failure to consider relevant evidence may constitute an error in principle warranting appellate intervention: *Dunmore*, at para. 73; *K.M.N.*, at paras. 83, 106-108.

- [38] When the allegations and evidence of intimate partner violence are considered, there are genuine issues requiring a trial in relation to the application of the Limitations Act, 2002, and the doctrines of *res judicata* and abuse of process. As discussed below, that evidence forms part of the factual context relevant to those issues. In these circumstances, the record does not permit their final determination on a motion for summary judgment: *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429, 141 O.R. (3d) 81, at paras. 85-87, 92, citing *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 51.
- [39] I also note that the appellant's pleadings do not set out her claims arising from intimate partner violence with precision. This issue does not preclude the present disposition but will require clarification if the matter proceeds to trial. I return to this point below.
2. Genuine Limitations Issues Require Trial [40] The appellant submits that her claims against Eberhard, arising out of or connected to intimate partner assault, may fall within s. 16(1)(h.2) of the Limitations Act, 2002. This issue must be assessed in light of the pleadings, the statutory provisions, and the fact that the appellant was self-represented. The statement of claim alleges intimate partner violence alongside claims for fraud and emotional distress. Given those allegations, and the assaults admitted by Eberhard, the motion judge was required to consider whether the appellant's claims, as pleaded or with amendment, could engage s. 16(1)(h.2). Read generously, the appellant's submissions raised that issue: *R. v. Morillo*, 2018 ONCA 582, 362 C.C.C. (3d) 23, at paras. 11-12.
- [41] Sections 16(1)(h.2) and 16(1.3), enacted by the Sexual Violence and Harassment Action Plan Act[1] in 2016, remove the limitation period for claims advanced in a proceeding "based on" an assault in an intimate relationship if those claims are made "in relation to" that assault. This protection may apply to claims against third parties as well as against the alleged perpetrator: *X.H. v. Cota*, 2022 ONCA 274, at para. 7.
- [42] The "based on" requirement is met where the assault is an important component of the proceeding: *Choc v. Hudbay Minerals Inc.*, 2013 ONSC 1414, 116 O.R. (3d) 674, at paras. 80, 82, citing *J.P. v. Sinclair* (1997), 148 D.L.R. (4th) 472 (B.C.C.A.), at para. 17, and *John Doe v. Bennett*, 2002 NFCA 47, 215 Nfld. & P.E.I.R. 310, at para. 209, *aff'd* 2004 SCC 17, [2004] 1 S.C.R. 436. On summary judgment, the plaintiff must show a genuine issue requiring a trial that such an assault occurred: *Deluca v. Bucciarelli*, 2022 ONCA 774, at paras. 14, 24.
- [43] The "in relation to" requirement is satisfied where the claim has some connection to the assault. This requirement is broad and does not require a direct or proximate link: *Cota*, at para. 8; *Jane Doe v. Weinstein*, 2018 ONSC 1126, 47 C.C.L.T. (4th) 326, at paras. 26-27, per Monahan J. (as he then was); see also *Markevich v. Canada*, 2003 SCC 9, [2003] 1 S.C.R. 94, at para. 26; *R. v. McNab*, 2020 SKCA 4, 384 C.C.C. (3d) 316, at paras. 28-31.

- [44] These provisions are remedial and are to be interpreted generously in light of their purpose – “addressing broad systemic problems” concerning intimate partner violence: Jane Doe, at para. 24, per Monahan J.; see also *Clarke v. Clarke*, [1990] 2 S.C.R. 795, at p. 807. They must be applied contextually, including in light of the jurisprudential recognition that intimate partner violence may involve multiple forms of conduct and harm: *Bates*, at para. 30; *Ahluwalia*, at paras. 91-92.
- [45] On this record, the assaults admitted by Eberhard are capable of satisfying the “based on” requirement. They form part of the factual foundation for the appellant’s emotional distress claim and provide context for the related financial allegations.
- [46] There is likewise a genuine issue requiring a trial as to whether the appellant’s claims are “in relation to” those assaults. The emotional distress claim may be linked directly to the assaults. The appellant’s evidence also raises an arguable temporal and contextual connection between the alleged financial deception and the assaults, including events said to have followed her report to police. Whether that connection is established is a matter for trial.
- [47] In these circumstances, the applicability of s. 16 cannot be determined on summary judgment. As in *Cota*, that issue should be determined on a full evidentiary record at trial: at para. 11.
3. **Genuine Res Judicata and Abuse of Process Issues Require Trial** [48] The same record also bears on whether cause of action estoppel – a form of *res judicata* – or abuse of process bars the appellant’s claims. These doctrines may apply where a claim could have been advanced in an earlier proceeding, but both incorporate a discretionary component: *Bear Island Foundation v. Ontario* (1999), 126 O.A.C. 385 (C.A.), at paras. 31-32; *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, 500 D.L.R. (4th) 279, at paras. 32, 38-40.
- [49] The exercise of that discretion requires consideration of the circumstances in which the earlier proceeding occurred, including whether there was a reasonable basis for not advancing the claims at that time: *Métis Nation*, at para. 39; *Continental Appraisals Ltd. v. Air Touch Communications Ltd.*, 2024 BCCA 304, at paras. 67-78, 94-96.
- [50] The motion judge focused on whether the claims could have been brought in the earlier family proceeding, but did not address whether, in light of the evidentiary record, it would be unjust or inappropriate to bar them. That omission constitutes an error in principle warranting appellate intervention: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at paras. 65-66.

- [51] On this record, there are genuine issues requiring a trial as to whether the discretionary component of these doctrines should be exercised to permit the claims to proceed. The appellant relies on evidence relating to housing insecurity, financial instability, and the alleged violence and its effects during the relevant period. Whether those circumstances are established, and their legal significance, are matters for trial.
- [52] It is also arguable that the earlier family proceeding addressed related allegations primarily in support of interlocutory relief, including protection-related relief and interim possession of the home. If so, it may be open to a trial judge to conclude that the present claims do not undermine the objectives underlying *res judicata* or abuse of process: see *McCann v. Barens*, 2023 BCSC 2000, at paras. 44-46; compare *Klassen v. Epp*, 2025 BCSC 1056, 17 R.F.L. (9th) 95, at paras. 76-96.
- [53] The appellant's representation by counsel in the earlier proceeding is relevant but not determinative: *Danyluk*, at paras. 78-81; see also *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at para. 83. Whether practical constraints or other circumstances affected the advancement of these claims is a genuine issue requiring a trial.

B. The Appellant's Claims Against The Parents [54] I turn to the appellant's claims against the parents. The motion judge dismissed those claims on the basis that they are barred by the August 2017 consent order, which provides under the heading "final" that "[a]ll claims between" the appellant and the parents "are dismissed without costs." He concluded that this provision applied to the parents but not to Eberhard, who is not named. The issue on appeal is whether the motion judge erred in interpreting the consent order as barring the appellant's present claims against the parents.

- [55] A consent order is interpreted in accordance with the principles governing contractual interpretation. It must be read as a whole, giving the words their ordinary meaning in light of the surrounding circumstances known to the parties at the time. Where a consent order is alleged to contain a release, the objective is to determine the scope of the claims addressed by the order, having regard to its wording, subject matter, and purpose. Absent reversible error, the motion judge's interpretation is entitled to deference: *Johnston v. McLean*, 2024 ONCA 791, 504 D.L.R. (4th) 643, at paras. 14, 17; *Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 S.C.R. 540, at paras. 20-21, 33-34, 43-44; *Shih v. Shih*, 2017 BCCA 37, 91 R.F.L. (7th) 102, at para. 34.
- [56] I see no reversible error in the motion judge's interpretation. The consent order expressly refers to "all claims" between the appellant and the parents, and it was made in the context of finally resolving the parents' involvement in the family proceeding. On its face and in its context, the provision is capable of encompassing the claims now advanced: *Cunningham v. Moran*, 2011 ONCA 476, 283 O.A.C. 137, at paras. 44-47. The motion judge's conclusion that the order bars those claims is entitled to deference.

[57] It follows that the appeal must be dismissed with respect to the claims against the parents. In light of that conclusion, it is unnecessary to address the motion judge's alternative holdings concerning limitations, cause of action estoppel, or abuse of process as they relate to those claims.

IV. disposition [58] I would allow the appeal in part. I would set aside the orders granting summary judgment to Eberhard and awarding him costs, and I would remit the appellant's action against Eberhard for trial.

[59] The appeal is dismissed with respect to the appellant's claims against the parents, which remain barred by the August 2017 consent order.

[60] The appellant shall have leave to amend her statement of claim to clarify the claims advanced against Eberhard. The parties should seek case management before a judge of the Superior Court to assist them in timetabling the delivery of the amended pleadings and ensuring that the matter proceeds to trial as efficiently as possible. Further summary judgment motions would not be helpful in light of this court's determination that the appellant has raised genuine issues requiring a trial.

[61] If the parties cannot agree on the issue of costs, they may make brief written submissions of no more than two pages, plus costs outlines, within 14 days of the release of these reasons.

Released: February 26, 2026 "M.T."

"M. Tulloch C.J.O."

"I agree. Roberts J.A."

"I agree. George J.A."

[1] Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016, S.O. 2016, c. 2.

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