

Malamas v. Wey: The impact of intimate partner violence on summary judgment motions

By **Melanie A. Larock**

Law360 Canada (March 13, 2026, 2:44 PM EDT) -- In the recent decision of the Ontario Court of Appeal in *Malamas v. Wey*, 2026 ONCA 133, Chief Justice Michael Tulloch addresses how intimate partner violence impacts the application of the *Limitations Act, 2002* and the doctrines of *res judicata* and abuse of process in the context of motions for summary judgment.



Melanie A. Larock

The appellant had previously commenced a family law proceeding that had been resolved on consent. In the lower court decision, the respondents (the former husband and his parents) were successful on their motion for summary judgment in having the self-represented appellant's claims with respect to fraudulent conspiracy and material misrepresentation related to the ownership of the former matrimonial home, and emotional distress, dismissed on the grounds that such claims were statute-barred by a two-year limitation period, *res judicata* and an abuse of process.

Nowhere in the Endorsement does the lower court reference any allegations of intimate partner violence, which were made by the self-represented survivor. The appellant's pleading alleged intimate partner violence, and the respondent husband had admitted that he had assaulted the appellant and a child during the marriage. The failure to consider such allegations and evidence in the context of the motion for summary judgment was an error.

The Court of Appeal champions the need for courts to pay particular attention to allegations of intimate partner violence and consider whether they are relevant to the issues and the broader factual context. This is particularly important considering that many survivors of intimate partner violence are self-represented. It is therefore incumbent on the courts to consider the impact of intimate partner violence allegations on the legal principles and issues raised.

Chief Justice Tulloch stated that "[t]he jurisprudence further recognizes that intimate partner violence may involve patterns of conduct and may have consequences beyond individual incidents.... The jurisprudence recognizes that intimate partner violence may have psychological, economic, and relational effects that persist over time.... 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."

Malamas specifically describes how intimate partner violence is relevant to the application of the doctrines of limitations, *res judicata* and abuse of process. In a nutshell, the Court of Appeal held that the allegations and evidence of intimate partner violence raised genuine issues requiring a trial in relation to the limitation period defence and the discretionary doctrines of *res judicata* and abuse of process as they relate to the claims against the former husband. These issues could not be determined on a summary judgment motion.

In this case, the evidentiary record included allegations of physical assaults, threats of violence against the appellant and children, financial deception and financial control, behavioural challenges that the children had faced due to exposure to violence, and threats connected to the appellant's and children's housing.

In relation to the limitations defence, the court held that there was a genuine issue requiring a trial with respect to the limitation period. The question of whether s. 16(1)(h.2) of the *Limitations Act, 2002* applies, which provides that there is no limitation period for claims for assault within an intimate relationship, had to be determined at trial. The lower court had failed to consider that issue.

The Court of Appeal also held that there were genuine issues requiring a trial related to the defences of res judicata and abuse of process. The lower court had erred in failing to consider that the application of both doctrines is discretionary. The Court of Appeal noted the implications of the intimate family violence on the appellant's housing situation and financial security. The court raised the issue of whether there was a reasonable basis for the appellant not making her claims earlier, and thus whether discretion should be exercised in her favour.

The issue could not be determined on appeal, but it raised a genuine issue for trial. Specifically, the question of whether the court should exercise its discretion to apply these doctrines to bar the appellant's claims were genuine issues requiring a trial.

The Court of Appeal, recognizing that the appellant was self-represented, noted that her pleadings required clarification with respect to claims arising from intimate partner violence, and granted her leave to amend her pleadings to clarify her claims against her former husband. The court also recommended case management in the circumstances.

An undercurrent of the decision is that when self-represented parties raise allegations of intimate partner violence in their pleadings, courts should read those pleadings generously in the context of motions for summary judgment. Also, given the consequences of intimate partner violence, courts should question the appropriateness of finally determining such issues on a motion for summary judgment.

Courts must be better equipped at engaging with allegations and evidence of intimate partner violence. This case should send a strong message to courts to not overlook the contextual matrix of intimate partner violence and its legal significance and effect.

Melanie A. Larock is a partner and a family law litigator at Thomson Rogers. Melanie's expertise spans all areas of family law, with a particular emphasis on complex financial and legal issues and high-conflict parenting disputes, including cases of alienation and family violence. She is well-versed in the intersection of family law with other areas of law such as torts, criminal law, trusts, estates, tax, contract and business law. Melanie's writings have been featured in Money and Family Law, and she authors the blog "Coffee with Melanie: Recent Court of Appeal Family Law Cases."

The opinions expressed are those of the author and do not reflect the views of the author's firm, its clients, Law360 Canada, LexisNexis Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Yvette Trancoso at Yvette.Trancoso-barrett@lexisnexis.ca or call 905-415-5811.