

## Limitation period in Family law

**IMPORTANT:** The legal information contained in this sheet is intended to outline the limitation period in family law. It is not intended to serve as legal advice or to replace the guidance of a lawyer.

### INTRODUCTION

#### Limitation period

In **Ontario family law**, **limitation periods** determine how **long a person has to file an application with the court**.

These deadlines are intended to provide **legal certainty** and encourage the parties to **act within a reasonable time** after the **breakdown of a relationship** or the **occurrence of a material event**.

### TABLE OF DEADLINES

#### Overview of the main limitation period applicable by type of application

Claim	Limitation period	Statute	Application
Child support	<p><b>No fixed limitation</b> (arrears may be restricted).</p> <ul style="list-style-type: none"> <li>As long as the <b>child is under 18 years of age</b>.</li> <li>If the child is over 18 years of age, as long as the child is <b>enrolled in a full-time program of study</b> or <b>unable to become financially dependant</b>.</li> </ul>	<p><i>Family Law Act (FLA)</i>, section 31(1).</p> <ul style="list-style-type: none"> <li><b>Note:</b> The court <b>usually limits retroactive support to the last three years</b>. This period may be <b>extended</b> if the paying parent has concealed increases in income or ignored their support obligations to their child.</li> </ul>	Applies to <b>married spouses</b> and <b>common-law partners</b>

<b>Decision-making responsibility and parenting time, whether custody, access or parenting decision-making</b>	<p><b>No strict limitation period.</b></p> <ul style="list-style-type: none"> <li>However, the court will consider the <b>best interests of the child</b> and the stability of the current arrangement before modifying an established order.</li> </ul>	<i>Children Law Reform Act (CLRA), section 24(1).</i>	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Spousal support</b>	<p><b>No limitation period.</b></p> <ul style="list-style-type: none"> <li>However, claims are taken <b>more seriously if made early.</b></li> </ul>	<i>Spousal Support Advisory Guidelines (SPSAG).</i>	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Exclusive occupation or possession of family home</b>	<p><b>No limitation period.</b></p> <ul style="list-style-type: none"> <li>Claims must be made <b>while the right to occupy still exists</b> (before sale, transfer, or loss of occupancy right). It is therefore recommended to act quickly after separation.</li> </ul>	<i>Family Law Act (FLA), section 19 to 25.</i>	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Payment Equalization (division of properties)</b>	<p>The earliest of:</p> <ul style="list-style-type: none"> <li><b>2 years</b> from divorce,</li> <li><b>6 years</b> from separation,</li> </ul>	<p><b>LFA</b>, section 7(3).</p> <ul style="list-style-type: none"> <li><b>Note:</b> The court has a discretion to grant</li> </ul>	Applies to <b>married spouses</b>

	• <b>6 months</b> from the death of the first spouse.	an <b>extension</b> under section 2(8).	
<b>Claim against a spouse's estate (election of equalization)</b>	<b>6 months</b> from the issuance of the <b>certificate of appointment of the estate trustee</b> .	<b>LFA</b> , section 6(10).  • <b>Note:</b> The court has a discretion to grant an <b>extension</b> under section 2(8).	Applies to <b>married spouses</b>
<b>Domestic Contract Claims (Separation Agreements, Cohabitation Agreements)</b>	If a party wishes to <b>contest, amend or annul</b> a domestic contract, <ul style="list-style-type: none"><li>• <b>2 years</b> from the time the person discovers or ought to have discovered the cause of action,</li><li>• and in any case, <b>15 years after the date of the deed</b>.</li></ul>	<i>Limitations Act, 2002 (LA)</i> , section 4 and 15	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Application for support from a dependent against</b>	<b>6 months</b> from the issuance of the <b>certificate of appointment of the estate trustee</b> .	<i>Succession Law Reform Act (SLRA)</i> , section 57 and 58.  • <b>Note:</b> the court may allow a <b>late application</b> if the estate has not been fully distributed (section 61(1)).	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Cancellation of a</b>	<b>No specific limitation period</b> , but regular periods apply to	<b>LA</b> , section 16.	Applies to <b>married spouses</b>

<b>domestic contract</b>	claims regarding matters dealt with in the contract.		and <b>common-law partners</b>
<b>Equitable claims (excluding real property)</b>	<b>2 years</b> from the time when the person knew of the injury or became aware of his or her right.	<b>LA</b> , section 14.	Applies to <b>married spouses</b> and <b>common-law partners</b>
<b>Any other claims</b>	Presumably <b>2 years</b> for claims not described above.  Claims that are difficult to discover may be subject to the <b>15-year deadline</b> .	<b>LA</b> , sections 4 and 15.	Applies to <b>married spouses</b> and <b>common-law partners</b>

## CONSEQUENCES OF MISSING THE DEADLINE

### Loss of right to act and possible exceptions

If a limitation period has **expired**, the party usually loses the **right to bring an action**.

The court may reject the application because the time limit has expired, except in exceptional circumstances (e.g. **fraud, mental incapacity, manifest error**).

## GLOSSARY

### Definitions of Key Terms in Ontario Family Law

#### Application vs claim

- In Ontario, a **family law case** (e.g., parenting order or divorce) begins with the filing of an **application**.
- A **civil law** case (e.g., unjust enrichment of common-law spouses) begins with the filing of an **claim**

#### Claim for equity

- In some circumstances, the law does not properly reflect the principles of fairness.

- The court may be asked to intervene and decide the application **on a basis of fairness**, aimed at **rectifying an injustice** that a strict application of the law would have caused.
- While the basis of all equitable claims is an **allegation of fundamental unfairness**, there are several specific categories, including **unjust enrichment**.

### Limitation period

- A limitation period sets the deadline for filing a claim in court.
- It sets out the time limit within which an injured party may bring a claim resulting from any loss or damage arising as a result of an act or omission.
- Once the time limit has expired, an action cannot be brought, even if it is legitimate, unless the court gives special permission.

### Married spouses

- A **married spouse** is a person who has legally solemnized a marriage with another person by a person authorized by law, such as a **judge, justice of the peace**, or religious **official**.

### Common-law partners

- A person who **lives with a partner in a marriage-like relationship without being married**.
  - Continuous cohabitation for **at least 3 years**, or
  - Permanent relationship with a **biological or adopted child**
- No legal process is necessary to create a common-law relationship.

### Dependent

- Is a spouse (married or in a common-law relationship), parent, child or sibling of the deceased who, immediately before death, was receiving or entitled to **support from** the deceased.

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