

## Family

# Important family law deadlines to know

By Donna Yamazaki



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(March 31, 2020, 1:53 PM EDT) -- *Author's note: The Minister of Public Safety and Solicitor General has made a Ministerial Order under s. 9 of the Emergency Program Act that suspends limitation periods and time periods for commencing a civil or family action, proceeding, claim or appeal in B.C. The suspension went into effect March 26 and will continue until the date that the declaration of a state of emergency regarding COVID-19 expires or is cancelled.*

One of the most important considerations at the outset of legal claims is the application of any limitation dates. In many circumstances, including those that arise in a family law context, parties must bring claims before they "expire," or that claim will be extinguished. This article explores family law situations where there is a risk of statute-barred claims.

### Child support

Claims for child support are not time-limited in the same way that other claims may be. Child support is the right of the child. However, if child support is being sought from a stepparent, then there will be a timeline of one year.

Under s. 147(4)(a) of the *Family Law Act*, a child's stepparent has a duty to provide support for the child if he or she contributed to the child's support for at least one year. Pursuant to s. 147(4)(b), a party must commence a claim for child support from such a stepparent within one year after the date that stepparent last contributed to the child's support.

### Canada Pension Plan (CPP) claims

If the parties were married, there is no time limit for one of the parties to bring a claim for the division of CPP benefits. However, if one of the spouses passed away, the other must make a claim within three years of the death.

If the parties were unmarried, one of them must apply within four years of separation, unless the other spouse agrees in writing to waive this time limit.

### Spousal support and property claims

Section 198(2) of the *Family Law Act* provides that a spouse may start a proceeding for division of property or family debt; division of pension; or spousal support, no later than two years after:

- a) for married spouses, 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;
- b) for unmarried spouses in a marriage-like relationship, the date the spouses separated.

In other words, the limitation period starts to run on either a) the date that the court orders divorce or nullity; or b) the date that the spouses separate. Whether a) or b) applies to a former couple depends on whether they were married or not.

Section 198(5) of the *Family Law Act* suspends the running of the limitation period if the spouses

were engaged in family dispute resolution with a family dispute resolution professional, which the *Family Law Act* defines as being a family justice counsellor, a parenting co-ordinator, a lawyer, a mediator or an arbitrator.

## Cases

An example where a party missed the two-year deadline for claiming spousal support arose in *Welliver v. Hees* 2016 BCSC 1837. In that case, the parties began a marriage-like relationship in 1988 and separated on or before March 7, 2010. The action was commenced on March 15, 2013.

One of Eric Hees' defences to the spousal support claim was that it is statute-barred because the action was commenced more than two years after separation. In response, Marianne Welliver argued that the exception in s. 198(5) operated to suspend the limitation period.

However, the court did not accept this argument. In June 2010, Welliver retained a lawyer and attempted to start discussions. Hees saw a lawyer but the discussions did not proceed. At some point in 2011, the parties engaged in attempting to resolve their disputes. However, no family dispute resolution professional was involved.

Ultimately, the court held: "[I]t 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."

The court went on to conclude that Welliver's claim for spousal support was statute-barred, providing: "I must find that the action was commenced more than two years after the parties separated. While this conclusion seems harsh, it must be remembered that the right for an unmarried party to seek spousal support is a statutory right limited by the provisions in the *Family Law Act*. Even though Mr. Hees, on the facts of this case, has a clear moral obligation to provide support after 22 years of an inter-dependent relationship, the action was not brought within the time limit in the statute."

This is part one of a two-part series. Part two: Important family law deadlines to know: Appeals and lessons learned.

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