

Family

Important family law deadlines to know: Appeals and lessons learned

By Donna Yamazaki



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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, otherwise the claim will be extinguished. This series explores family law situations where there is a risk of statute-barred claims.

Part one discussed *Welliver v. Hees* 2016 BCSC 1837 as an example of a case where a party missed the two-year deadline to claim spousal support. In another case, *Der Woon v. Zadorozny* 2019 BCSC 2004, the action by the claimant was also dismissed due to the expiry of the limitation period in s. 198(2) of the *Family Law Act*.

In this case, the parties began cohabiting in 2006 and the date of separation was in issue. Gerald Der Woon had filed a Notice of Family Claim on Aug. 18, 2016, which was statute-barred as it was more than two years after the separation date according to Laura Zadorozny. She thus sought a preliminary determination of the date of separation.

The court found that on June 17, 2014, Zadorozny had made Der Woon a nice dinner and then told him that their relationship was over. After that, the parties did not sleep together and talked infrequently. About three days later, Der Woon asked Zadorozny if she was resolved in her decision, and she said she had never been more resolved.

They no longer acted or held themselves out as a couple. While Der Woon did not leave the family home until September 2014, the court determined based on the evidence that the parties had separated on June 17, 2014. As a result, the court dismissed the action by Der Woon because it was statute-barred.

Appeals

Even where the claim was brought successfully, there is an ongoing call for vigilance when it comes to deadlines. In addition to procedural deadlines, such as the time limit on responding to various documents filed with the court and subsequently served on parties, it is also important to be alive to due dates on setting aside an agreement or appealing a court order.

The table below outlines some important considerations.

Action	Time limit
Applying to set aside or replace an order or agreement respecting property or spousal support.	<i>Two years</i> after the spouse discovered, or reasonably ought to have discovered, the grounds for making the application.
Applying to set aside the registration of a foreign order.	<i>Thirty days</i> after receiving notice of the registration.

Action	Time limit
Appealing an order of the provincial court to the Supreme Court.	<i>Forty days</i> after the order is made.
Appealing an order of any B.C. court.	<i>Ninety days</i> after the date of the ruling, decision or order is entered as a judgment.

Lessons learned

In summary, lawyers and clients alike should be aware of the following key dates in family law, which may trigger the countdown to a limitation date:

- Separation date (not always a straightforward determination);
- Date of an order for divorce or nullity;
- Date of the death of a spouse;
- Date of discovery of the grounds for making an application to set aside an agreement on property;
- Date of receipt (or being served with) any court documents;
- Date of judgment a party wishes to appeal.

When it comes to limitation dates, there is no such thing as being too careful. While it may be tempting for clients to hit "snooze" on that alarm to seek legal advice, the clock does not stop running. If the court determines that a claim is extinguished forever, it will be virtually impossible to revive it.

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

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