

# TVA | The Legal Outsourcing Network

## TABLE OF LIMITATION PERIODS: LIMITATIONS ACT, 2002

Amended to 2021, c. 34, Sched. 9, s. 10.

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Any limitation period prescribed under any statute\*, and any period of time within which any step must be taken in a proceeding\*\*, were **suspended** retroactively to March 16, 2020. Effective **September 14, 2020**, the suspensions are revoked, and limitation and time periods will resume running as of that date.

\*except the Niagara Escarpment Planning and Development Act (resumed April 9, 2020), the Construction Act (resumed April 16, 2020), and the Family Responsibility and Support Arrears Enforcement Act, 1996 (resumed June 8, 2020)

\*\*subject to the discretion of the court

### Statutory Limitation Periods Referenced in the Schedule to the *Limitations Act, 2002* (Section 19)

STATUTE	PROVISION	SECTION(S)	LIMITATION PERIOD(S)
Arbitration Act, 1991	Application to enforce award	52(3)	Later of 10 yrs & Dec 31, 2018
Assignments and Preferences Act	Contestation of claim	26(2) & 27(2)	30 days & 10 days
Business Corporations Act	Bar right to examine books	157(2)	15 days
	Fix value of shares	185(18) & (19)	50 days & 20 days
	Security-takeover/issuer bid	188(9)	30 days
	Fix value-takeover/issuer	188(13),(14)	20 days & 20 days
	Fix value- acquire securities	189(5)	90 days
City of Toronto Act, 2006	Application to quash by-law	214(4)	one year
	Application to quash debenture by-law	250(2)	3 months
	Action for unpaid tax, penalty or interest	270(4)	4 years & 6 years
	Entitlement to proceeds of sale paid into court	351(5)	90 days after pymt & within 10 years of pymt
Civil Remedies Act, 2001	Forfeiture of property; conspiracy proceeding	3(5) & 13(7)	15 years & 15 years
Commodity Futures Act	Proceedings under Act	60.4	6 years
Construction Act	Motion for leave for JR of adjudicator's decision	13.18(2)	30 days
	Filing adjudicator's decision to enforce as court order	13.20(2)	2 years
	Preserve lien	31	45 days (60 days*)
	Perfect lien	36	45 days (90 days*)
Corporations Act	Shareholder liability-decreased capital	37(2)	6 months & 2 years
Creditors' Relief Act, 2010	Object to sheriff's distribution	12(1)	8 days
Drainage Act	Damages or injunctions –notice	111(1)	10 days notice
	Filing of Notice	111(2)	2 years
Education Act	Declaration of board vacancy	218(2)	90 days
	Declaration of vacancy (French-Language Board)	11(3)-Sch 1	90 days
Election Act	Contest validity of election	99(4)	90 days
Electricity Act, 1998	Payment, adjustment, etc. from or to IESO	36.1.1	2 years (but subject to regs, no discoverability)
Environmental Bill of Rights, 1993	Contravention causing harm	102	2 years
Estates Act	Allow contested claim	44(2) & 45(2)	30 days (3 months with leave)
	Claim barred by Trustee Act	47	3 months
Estates Administration Act	Order to distribute estate	17(5)	3 years
Expropriations Act	Quash or set aside proceeding	43	30 days

Family Law Act <sup>1</sup>	Equalization net family property	7(3)	2 years, 6 years, 6 mos
Fines and Forfeitures Act	Interest in forfeited personal property	6(2)	60 days
Forestry Workers Lien for Wages Act	Enforce lien	8(1)	30 days
	Distribution after lien payment	26(1)	30 days
Fuel Tax Act	Right to possession of fuel	8(13)	30 days
Gasoline Tax Act	Right to possession of fuel	5(13)	30 Days
Income Tax Act	Directors' liability	38	2 years
Insurance Act <sup>2</sup>	Claim for fire insurance	148 (con. 14)	1 year
	Damage to automobile	259.1	1 year
	Accident benefits dispute	280(2) /A & 56 SABS	2 years <sup>3</sup>
International Commercial Arbitration Act, 2017	Application for recognition and/or enforcement of award	10	Later of 10 years & Dec 31, 2018
Libel and Slander Act	Libel in newspaper or broadcast	6	3 months
Liquor Licence and Control Act, 2019	Application to possess seized liquor	59(4)	30 days
Mortgages Act	Building mortgage	21(2)	1 year
	Tenant's right to re-occupy	54(2)	210 days
Municipal Act, 2001	Quash by-law (not debenture by-law)	273(5)	1 year
	Proceeds of sale-payment	380(5)	90 days after pymt & within 10 years of pymt
	Quash debenture by-law	415(2)	3 months
Municipal Conflict of Interest Act	Contravention of disclosure duty etc.	8(2) & 8(6) [effective Mar 1/18]	6 weeks & 6 years
Municipal Elections Act, 1996	Recounts – clerk & judicial	58(2) & 63(1)	30 days & 15 days
	Validity of election	83(2)	90 days
Not-for-Profit Corporations Act, 2010* (Effective October 19, 2021)	Corp may seek order barring examination of financials	98(3)	Within 15 days of request to examine
	Corp's application to fix fair value	187(14)	Within 50 days after the action approved by the resolution is effective
	Dissenting member's application to fix fair value	187(15)	Within a further 20 days (70 days total) if corp fails to apply
Ontario Home Ownership Savings Plan Act [still appears on Schedule but entire Act was repealed in 2009]	Enforce provisions of Act	18	6 years
Opioid Damages and Health Care Costs Recovery Act, 2019	Crown action for recovery of the cost of health care benefits, damages caused by an opioid-related wrong	6(1)	15 years from coming into force of Act
Personal Property Security Act	Entitlement to compensation; Set aside compensation decision	44(13) & (14)	90 days & 30 days
Prohibiting Profiting from Recounting Crimes Act, 2002	Payment & forfeiture; Pay into Court or preserve property	4(5) & 6(6)	15 years & 15 years
Public Lands Act	Compensation for deficiency of land	34(3)	5 years
Reciprocal Enforcement of Judgments Act	Registration of judgment	2(1)	6 years
Reciprocal Enforcement of Judgments (U.K.) Act	Registration of judgment	Sch: art 3, p1,	6 years
Securities Act	All proceedings (except where otherwise provided)	129.1	6 years

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Securities Act	Civil proceedings-rescission	136(6) & 138	90 days notice, 180 days
	Civil proceedings-other than rescission	138	180 days or 3 years
	Misrepresentation, failure to disclose	138.14	6 months and 3 years
Succession Law Reform Act	Order for support of dependants	61	6 months
Taxation Act, 2007	Director's liability to withhold tax	139(4)	2 years
Tile Drainage Act	Quash by-law	2(3)	4 weeks
Tobacco Damages and Health Care Costs Recovery Act, 2009	Action for tobacco related wrong	6(1)	2 years
Tobacco Tax Act	Right to possession of seized tobacco	6(10) & 24(5)	30 days
Trustee Act	Actions by or against deceased's estate	38(3)	2 years

The table lists the statutes in the Schedule to Ontario's Limitations Act, 2002, and the corresponding limitation periods. This table is intended as a guideline only. The statutory provisions listed must be consulted.

Note: This table does not cover either (a) the Real Property Limitations Act, R.S.O. 1990, c. L.15, which should be consulted for limitation periods dealing with real property, or (b) limitation periods that are set out in any federal legislation.

**No Limitation Periods<sup>4</sup>** Pursuant to Section 16 of the *Limitations Act, 2002*, there are no limitation periods in respect of the following proceedings:

Topic	Description	Section
<b>Civil Remedies</b>	Forfeiture order under s. 8 (property) or 11.2 (vehicle) of the <i>Civil Remedies Act, 2001</i>	16(1)(e)
<b>Collateral</b>	Debtor/creditor in possession of collateral to redeem/realize it	16(1)(f), (g)
<b>Court order</b>	Enforcement of a court order	16(1)(b)
<b>Crown</b>	Recovery of money owing to the Crown re. fines, taxes, penalties and interest	16(1)(i), (j) (2) and (3)
<b>Declaration</b>	Declaration, if not seeking consequential relief	16(1)(a)
<b>Disability</b>	See Crown above re. Ontario Disability Support Program Act, 1997	16(1)(j)(ii) and (2)
<b>Economic Development</b>	See Crown above re. economic development loans	16(1)(j), (2) and (3)
<b>Environmental</b>	Undiscovered environmental claims	17
<b>Health Programs</b>	See Social Assistance below	16(1)(j), (2) and (3)
<b>Medical Resident Loans</b>	Recovery of money owing re. loans, awards or grants under the <i>Ministry of Training, Colleges and Universities Act</i> , the <i>Canada Student Financial Assistance Act</i> or the <i>Canada Student Loans Act</i>	16(1)(k)
<b>Sexual Assault</b>	Any claim for sexual assault	16(1)(h)
<b>Sexual Misconduct</b>	Where the victim was a minor or the relationship between the parties meets certain criteria	16(1)(h.1)
<b>Assault</b>	Where the victim was a minor, or the parties were in an 'intimate relationship', or the victim was dependant on the defendant	16(1)(h.2)
<b>Social Assistance</b>	See Crown above re. reimbursement of money paid re. social, health or economic programs or policies as a result of fraud, misrepresentation, error or inadvertence	16(1)(j), (2) and (3)
<b>Student Loans</b>	See Medical Resident Loans above	16(1)(k) and (3)
<b>Support</b>	Obtaining or enforcing support under the <i>FLA</i> or domestic contract	16(1)(c)
<b>Welfare</b>	See Crown above re. <i>Ontario Works Act, 1997</i>	16(1)(j)(ii), (2) and (3)

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## **Equitable Property Claims Among Spouses**

<sup>1</sup> See *McConnell v. Huxtable*, 2014 CarswellOnt 1152, 2014 ONCA 86, [2014] O.J. No. 477 (C.A.) in which the Ontario Court of Appeal clarifies the relationship between the *Limitations Act, 2002* and the *Real Property Limitations Act* in the context of unjust enrichment claims between common law spouses. The Court of Appeal had to decide: (a) whether the two year limitation period in the *Limitations Act, 2002* applied, thus rendering the action statute barred; (b) whether the ten year limitation period under s. 4 of the *Real Property Limitations Act* applied, thus rendering the action 'safe' as having been commenced on time; or (c) whether neither Act applied, leaving a 'legislative gap' such that there is no statutory limitation period. Rosenberg J.A. agreed with the motions judge that clearly the claim was an 'action' to 'obtain' a right to the property, and that the language of s. 4 of the *Real Property Limitations Act* is broad enough to encompass an equitable claim for property based on the remedy of constructive trust.

## **Insurance**

<sup>2</sup> See the case of *Boyce v. Co-operators General Insurance Co.*, 2013 CarswellOnt 5736, 2013 ONCA 298, 228 A.C.W.S. (3d) 834, 116 O.R. (3d) 56, 307 O.A.C. 28, 22 C.C.L.I. (5th) 1, [2013] O.J. No. 2568 (C.A.) for clarification of the enforceability of contracts of insurance which purport to shorten the two year limitation period set out in s. 4 of the *Limitations Act, 2002*. The Court of Appeal clarifies s. 22 of the *Limitations Act, 2002*, which is the general rule (and exceptions to it) which forbids "contracting out" of the general two year limitation provision found at s. 4. The Appeal Court held firstly that a term purporting to shorten the limitation period must "in clear language" describe the limitation period, identify the scope of the application of it, and exclude the operation of other limitation periods. Unless the term is in the contract and meets those requirements, the two year limitation period will apply. Secondly, the "business agreement" exception will not apply to persons defined as "consumers" in the *Consumer Protection Act, 2002*, who enter into agreements for personal, family or household purposes. In those situations, the two year limitation will apply. Note, leave to appeal to the Supreme Court of Canada was refused: 2013 CarswellOnt 14166; [2013] S.C.C.A. No. 296 (S.C.C.).

*Kassburg v. Sun Life Assurance Co. of Canada*, [2014] O.J. No. 6222, 2014 ONCA 922 (C.A.) is a decision of the Ontario Court of Appeal which applied *Boyce*, *supra* to determine whether a contractual limitation period failed for uncertainty/ambiguity. The Court of Appeal agreed with the motions judge that the one year limitation period in an LTD insurance policy was ambiguous and thus unenforceable, as it expressed the limitation period differently in two different places. The Contract Document provided that time started to run from "the end of the time period in which proof of the claim is required", and the Booklet provided it ran from "after the date [the insurer] must receive [the insured's] claim forms". The insurer further argued that the limitation period began to run in 2008 when the plaintiff was first denied her benefits, and thus the claim (issued in 2012) was statute-barred no matter which limitation period applied. Again, the appeal court found no reason to disagree with the conclusion of the motions judge that the two year limitation period began to run when the plaintiff was advised, in 2011, that her claim for benefits was denied at the "third and final appeal level".

Also of note, the Supreme Court of Canada in *Lombard General Insurance Company of Canada v. Schmitz*, [2014] S.C.C.A. No. 143 dismissed the application for leave to appeal the decision of the Ontario Court of Appeal in *Schmitz (Litigation guardian of) v. Lombard General Insurance Co. of Canada*, [2014] O.J. No. 531, 2014 ONCA 88, 315 O.A.C. 187, 31 C.C.L.I. (5th) 1, 118 O.R. (3d) 694, 237 A.C.W.S. (3d) 484, 2014 CarswellOnt 1177. This case involved the underinsured coverage under OPCF 44R. At issue on appeal was whether the 12 month limitation period applied as per s. 17 of OPCF 44R, or whether the two year period applied as per s. 4 of the *Limitations Act, 2002*. Also at issue was when the period of time commenced. The motion judge held that the period of two years applied, and that it commenced when the claimant made a request for the compensation provided for by OPCF 44R. The Court of Appeal dismissed the insurer's appeal, but made a minor amendment to the Order, holding that the time began to run the day after the demand for indemnification is made, as the insured only suffers a loss once the insurer has failed to satisfy its legal obligation.

<sup>3</sup> See *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882 which, although decided under predecessor legislation (the former s. 281.1(1) of the *Insurance Act* and s. 51(1) of the *Statutory Accident Benefits Schedule – Accidents on or After November 1, 1996*), is arguably applicable to the identical current legislation (s. 280(2) of the *Insurance Act* and s. 56 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010*). The case held that the hard two-year limitation period outlined in those sections is subject to the discoverability rule.

## **Fraud**

<sup>4</sup> It is a common misconception that a claim grounded in fraud has no limitation period. Civil litigators who should ever have occasion to represent a plaintiff bringing a fraud action - as well as those representing a defendant on the receiving end of a fraud action - should know that the two year limitation applies to these cases. Of course, the very nature of fraudulent activity means that the actions of the wrongdoer were at one point being deliberately concealed. Thus, the discoverability principles will likely be in play when determining the commencement of the limitation period. For some appellate level cases on this issue, see: *Dynamic Fuel Systems Inc. v. Synergic Distribution Inc.*, [2013] O.J. No. 2708, 2013 ONSC 4081, 2013 CarswellOnt 7897, 229 A.C.W.S. (3d) 95 (Div. Ct.) and *Portuguese Canadian Credit Union Ltd. (Liquidator of) v. Pires*, [2012] O.J. No. 2215, 2012 ONCA 335, 2012 CarswellOnt 6250, 216 A.C.W.S. (3d) 473 (C.A.).

*Kaynes v. BP p.l.c.*, 2021 ONCA 36 clarifies that determining the discoverability of fraudulent misrepresentation claims depends on when the plaintiff became aware of the defendant's knowledge of the falsity of its misrepresentation. In this securities case, the appellant purchased BP shares in 2008 and BP made corrective disclosures in 2010. The Court of Appeal disagreed with the motion judge, who held that the fraudulent misrepresentation was discoverable in 2010 by virtue of the corrective disclosures. BP's pleading indicated it continued to deny knowledge until 2015, at which time the fraud was discoverable.

**Special Circumstances** Until the Ontario Court of Appeal's decision in *Joseph v. Paramount Canada's Wonderland* (2008), 90 O.R. (3d) 401 (C.A.), many lawyers in Ontario thought they could still rely on the common law doctrine of special circumstances, which gave the Court the discretion to extend a limitation period after its expiration, if special circumstances existed. The Court of Appeal in *Joseph* has unequivocally pronounced that the doctrine no longer applies under the new *Limitations Act, 2002*. For a full article on this case, please visit <http://www.virtualassociates.ca>

**Discoverability & Pleadings** See the case of *Collins v. Cortez*, [2014] O.J. No. 4753, 2014 ONCA 685 (C.A.) in which the Court of Appeal confirmed that plaintiffs do not have to anticipate a limitations defence by pleading the material facts relevant to discoverability in the statement of claim

See the Supreme Court of Canada's recent decision in *Pioneer Corp. v. Godfrey*, 2019 SCC 42, a class action case brought under the *Competition Act*, R.S.C. 1985, c. C-34, which clarifies that the discoverability rule is not a universally applicable rule of limitations, but a rule of construction to aid in the interpretation of statutory limitation periods. It can therefore be displaced by clear legislative language.

In *Albert Bloom Limited v. London Transit Commission*, 2021 ONCA 74, the Court of Appeal held that actual knowledge is a fact-specific inquiry which looks at all of the circumstances – there is no "bright line" test. This case was an environmental contamination claim where the landowner had knowledge of several properties identifying its property as the potential source of contamination. The Court held that subsurface testing was not required to establish actual knowledge of contamination. The landowner's third party claim against the predecessor landowners was struck, on the basis that it was statute-barred.

In *Andrews v. Pattison*, 2022 ONCA 267, a medical malpractice case, the Court of Appeal stressed that plaintiffs should not wait for expert reports before issuing a claim. The CA agreed that the claim was discoverable when the plaintiff met with her lawyer, as she had all of her medical records, and concern was expressed about whether a better outcome would have occurred if an earlier x-ray been taken. The action was summarily dismissed as statute-barred.

**The Appropriate Means** As part of discoverability, keep in mind s. 5(1)(a)(iv) of the *Limitations Act, 2002* which states that a claim may be 'discovered' when the plaintiff first knew that a proceeding would be an appropriate means to remedy the injury, loss, or damage. Most recently, this argument was successful in *Presley v. Van Dusen*, 2019 ONCA 66. The Ontario Court of Appeal in that case held that the plaintiff homeowners, who had a septic system installed by the defendant contractors in 2010 and noticed problems with it as early as 2011, were entitled to rely on the expertise of the contractor, who attempted to remedy the problem over the years, before determining that a lawsuit was required to properly remedy the problem. It was held that the claim, commenced in 2015, was not statute-barred.