

The Limitation Period for Equitable Trust Claims Against Estates in Ontario

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One of the most actively litigated estate issues of the past two years is surprisingly narrow: when a claimant asserts an equitable interest in real property involving an estate, does the two-year limitation period under s. 38 of the *Trustee Act* apply, or the ten-year limitation period under the *Real Property Limitations Act*?

The issue arises often in practice. Unmarried partners may live together in a property for years and share its expenses. Adult children may pay for upgrades or maintenance to their parents' home. Those who contribute in this way often expect to receive an interest in the property, particularly where their efforts have increased its value. But how long can the claimant wait before it needs to sue?

Limitation Periods Under the *RPLA* and the *Trustee Act*

Section 38 of the *Trustee Act* permits a person to sue an estate where the deceased was liable for a "wrong", and s. 38(3) requires that such an action be brought within two years of the death. A "wrong" can include the basis for a constructive trust over estate property.

By contrast, s. 4 of the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 (the "*RPLA*"), provides a ten-year limitation period for actions to recover land. That provision states:

4 No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom the person making or bringing it claims, or if the right did not accrue to any person through whom that person claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it. [Emphasis added]

Given these overlapping provisions, which limitation period applies to equitable trust claims against an estate?

Equitable Trust Claims Against an Estate: Two Years

In 2024, the Court of Appeal held in *Ingram v. Kulynych Estate*, 2024 ONCA 678, that equitable trust claims against an estate are subject to the strict two-year limitation period under s. 38(3) of the *Trustee Act*.¹

Ingram deviated from earlier Court of Appeal jurisprudence *McConnell v. Huxtable*, 2014 ONCA 86, which held that a claim for unjust enrichment seeking a remedial constructive trust over another's property is "an action to recover any land" within the meaning of s. 4 of the *Real Property Limitations Act*.² The key distinction was that *Ingram*, unlike *McConnell*, involved a claim against a deceased person's estate.³

To reconcile the two competing limitation periods, the court in *Ingram* followed the framework in *Bank of Montreal v. Iskenderov*, [2023 ONCA 528](#), 168 O.R. (3d) 1, considering: (1) the historical approach to the limitation periods at issue, including their legislative purpose; (2) the judicial approach to interpreting them; (3) the nature of the relief sought; and (4) the language of the statutory provisions.⁴

Not only does Section 38(3) of the *Trustee Act* imposes a two-year limitation period running from the date of death, but no discoverability principle applies to it.⁵ This strict limitation period reflects the legislature's intention to promote certainty and finality, to spare trustees indefinite financial exposure, and to help them administer estates promptly.⁶

Following *Ingram*, a series of decisions grappled with competing application of Section 38(3) of the *Trustee Act* and Section 4 of the [RPLA](#). These include the following:

1. *Gomes v. Da Silva*, [2024 ONCA 792](#) - three siblings disputed ownership of the family home after their mother's death. The appellant claimed 100% beneficial ownership of the home based on services he had provided since its purchase. The Court of Appeal held that s. 4 of the *RPLA* applied.
2. *Sparovec v. Smith et al.*, 2025 ONSC 6530 - the court applied the ten-year limitation period under s. 4 of the *RPLA* to a brother's resulting trust claim against his sister, because the claim was made against her rather than against their mother's estate.
3. *O'Neill Estate v. Cahill*, 2026 ONSC 1176 - the court applied the two-year limitation period under s. 38 of the *Trustee Act* to a claim for an equitable interest in the deceased owner's property, finding that remedial claims for an interest in land are subject to a ten-year period while the owner is alive, but a two-year period after the owner's death.
4. *Clement v. Clement*, 2026 ONSC 4839 - a mother's express trust required that her Gravenhurst property be used for her son John's benefit for his lifetime.⁷ Another son, Richard, paid for its upkeep and, after both deaths, claimed a resulting or constructive

trust to recover those costs. The estate trustee argued the claim was out of time under the two-year period, but the court held that the ten-year limitation period in s. 4 of the *RPLA* applied.

One issue left unanswered following *Ingram* was whether the 2-year limitation period under the *Trustee Act* applied, even where the claim was strictly confined to real property, as opposed to other estate assets. The Court of Appeal's recent decision in *Thiessen v. Thiessen Estate*, 2026 ONCA 730 ("*Thiessen*"), appears to settle the question where the equitable trust claim is confined to the estate's real property. The court held that the only claims to recover land against an estate that attract the ten-year limitation period are those in respect of express trusts:

[45] The only claims against an estate that are not subject to the two-year limitation period under [s. 38](#) of the *Trustee Act* are expressly set out in the *RPLA*: (i) "claims to recover land or rents in respect of express trusts of land or rents vested in a trustee" (emphasis added); (ii) the dower rights of a spouse against her spouse's estate; and (iii) an action for arrears of dower (or resulting damages): *RPLA*, ss. 25, [26](#), [27](#) and [42](#); *Ingram*, at para. [44](#).

The court made clear that equitable trust claims over real property against an estate are subject to the two-year limitation period under the *Trustee Act*, not the ten-year period under the *RPLA*. As the court explained:

[48] First, equitable trust claims are not excepted from the *Trustee Act*. This court in *Ingram* noted at para. [45](#) that "it would have been a simple thing for the legislature to include equitable trust claims against an estate as an exception to [s. 38](#) of the *Trustee Act*. It did not do so." The court went on to state that, "[t]hese exceptions are just that – discrete, readily ascertainable exceptions to the legislative intent ... to be subject to the two-year limitation period under s. 38(3)."

The court in *Thiessen* also addressed overlapping limitation periods. Consistent with *Ingram*, it held that s. 38 of the *Trustee Act*, as a specific legislative provision, governs all claims against estates arising from wrongs for which the deceased was liable, even where s. 4 of the *RPLA* might also apply.⁸

Equitable Trust Claims Against a Living Person: Ten Years?

While *Ingram* and *Thiessen* may have settled the limitation period for equitable trust claims against an estate, a question remains: what limitation period applies when the claim is directed against a living person, even though it arises in the context of a death?

In *Sparovec v. Smith et al.*, 2025 ONSC 6530, the Superior Court appears to have applied the ten-year limitation period to equitable trust claims against persons alleged to hold property in trust for an estate. Although the application was commenced 4.5 years after the brother learned of the transfer, the court emphasized that his resulting trust claim was made against his sister, not their mother's estate. This distinguished *Ingram*, which concerned a claim against an estate, and meant that the policy of efficient estate administration underlying the strict *Trustee Act* period did not apply.⁹

Notably, the court also addressed the brother's allegation that the sister had misappropriated the mother's assets during her lifetime. Because those claims did not relate exclusively to real property, the court noted they would be subject to either the two-year discoverability-based period under the *Limitations Act* or the strict two-year period under the *Trustee Act*, though they were not time-barred in any event.¹⁰

O'Neill Estate v. Cahill, 2026 ONSC 1176, decided before the Court of Appeal's ruling in *Thiessen*, is also instructive. At paragraph 27 of its decision, the court in *O'Neill Estate* offered the following helpful summary distinguishing equitable trust claims against an estate from those against an individual.

[27] As a consequence, the Court of Appeal has clearly established that while remedial claims for an interest in land are subject to a 10 year limitation period while a person is alive, they are subject to a two year limitation period after the death of the legal owner. Specifically, the cases mentioned above establish the following:

- a. Claims for remedial constructive trust which do not involve an estate are subject to the 10 year limitation period under the RPLA and not the 2 year limitation period under the LA, 2002. (McConnell)
- b. Claims for remedial constructive trust which do involve an estate must be asserted within two years from the death of the deceased pursuant to the TA. (Kulynych Estate)
- c. Any claim, such as a fraudulent conveyance, which was never caught by the former *Limitations Act*, and is not protected by the 10 year period in the [RPLA](#), will be subject to the 2 year limitation of the LA, 2002 (Iskanderov) or, in the case of an estate, the strict 2 year limitation period in the TA. (Kulynych Estate)

Further, while the court in *O'Neil* suggests that all equitable trust claims involving an estate are subject to the 2-year limitation period, paragraph 27 of that decision may implicitly be confined to equitable trust claims *by* or against an estate; not necessarily any equitable trust claim in which an estate is merely "involved".

Conclusion

Following *Ingram* and *Thiessen*, the law may now be reasonably settled for claims against an estate: equitable trust claims over real property against an estate must be brought within two years of the date of death under s. 38(3) of the *Trustee Act*, with no discoverability principle to extend that period. The ten-year limitation period under s. 4 of the *RPLA* remains available against an estate only in the narrow circumstances the RPLA expressly sets out, such as claims to recover land in respect of express trusts.

Less certain is the position where the claim is directed against a living person who is alleged to hold property in trust, even though the dispute arises from a death. *Sparovec* suggests that the ten-year period may still apply in that situation, because the policy of efficient estate administration underlying the *Trustee Act* is not engaged.

The practical lesson is simple: anyone who has contributed to a property and believes they have an interest in it should obtain advice promptly after the owner's death. Where an estate is involved, two years can pass quickly, and a missed deadline will usually be fatal to the claim. Potential claimants should seek legal advice promptly to determine how long they have to bring their claim for an equitable interest in property where an estate is involved.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.