



Promissory Note Holders Can Rest Easy Thanks to Change in Law

by Laura McLennan

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Two years ago, *Blaneys on Business* reported to you on a case out of the Ontario Court of Appeal, *Hare v. Hare*.

To refresh your memory, Ms. Hare gave her son a loan, secured by a demand promissory note. The son did not repay the loan and Ms. Hare sued on the note. She lost her case because the court held that she had started her action after the limitation period had expired.

Of interest was the Court's ruling that, in spite of the new rules in the *Limitations Act, 2002* regarding the "discoverability" of claims - that the limitation period only starts running when it is "discovered" that a claim would be appropriate - the old common law rule, that an action lies on a demand note as soon as the note is given, continued to apply. In the case of an action on a demand note, the limitation period, two years under the *Limitations Act, 2002*, began running as soon as the demand note was given (and was restarted each time the debt was acknowledged, either by the making of an interest payment or otherwise).

The ruling rightfully left many holders of demand promissory notes nervous about their chances of enforcing a demand promissory note if no payment or other acknowledgment of the debt had been made in the past two years.

Holders of demand notes can now rest easy because Ontario has amended the *Limitations Act, 2002*. The amendments, which came into force November 27, 2008, provide that in the case of an action on a demand obligation, the limitation period begins to run on "the first day on which there is a failure to perform the obligation, once a demand for the performance is made."

There is no deadline for the demand to be made. It can be issued a month after the loan is given, or a decade. But once it has been issued, the two-year limit on legal action to recover the debt begins. As in the original law, the two-year clock is restarted whenever the borrower acknowledges the debt, whether by making an interest payment or by some other means.

The amendments go further and make the change retroactive to cover all demand obligations since the act first came into force on January 1, 2004.

Simply put, the limitation period for an action on a demand promissory note, which is still two years, won't begin running until a demand for repayment is made. ■