



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS

**Corporate Bulletin, May 2005**  
**Limitations Act - Demand Loans**  
by David Edwards

As noted in our April Bulletin, the Limitations Act of Ontario 2002 ("the Act") came into effect January 2004. One of the most significant aspects of the Act was the reduction of the limitation period to initiate lawsuits from six years to two years subject to certain specific exceptions. If a lawsuit is not commenced within two years of the date that the underlying claim was discovered or should have been discovered, the ability to commence an action is statute barred.

**Demand Loans**

The change from six years to two years may be very significant for demand loans. Courts have, in the past, determined that promissory notes which are payable on demand create an obligation to pay from the time that the promissory note was entered into. This has resulted in the limitation period normally being calculated from the time that the promissory note was created. Under the Act it is possible to argue that a claim arises only once a demand for payment is made pursuant to the note. If this position is supported by the courts, the limitation period would be calculated from the date of demand and not the date of signing the promissory note. This remains an outstanding issue until resolved by the courts.

Before the Act was passed it was possible for parties to mutually decide upon a limitation period for their circumstances; however, under the new Act it is not possible for the parties to shorten or lengthen the limitation period by agreement. Having said this, the Act does provide that a signed acknowledgement will restart the limitation period as of the date of that acknowledgement. This acknowledgement can take the form of a partial payment of the loan (principal or interest) or written acknowledgement of the indebtedness.

As previously noted in our April, 2005 Bulletin, there is an ultimate fifteen year limitation period which commences on the date of the underlying act or omission which gave rise to the claim. This is the case regardless of when the claim was actually discovered or should have been discovered. This fifteen year ultimate limitation period will lapse notwithstanding acknowledgements of the debt from time to time.

Based upon the foregoing, we recommend that lenders be aware of the following:

1. Until the courts have determined the matter, lenders should diarize both the two year limitation and the ultimate fifteen year limitation period by calculating from the date that the demand note was signed.
2. Where payments have not been made under the demand note you should obtain written acknowledgements of the indebtedness from the debtor prior to expiry of the limitation period and in that event re-diarize the new limitation period.
3. If you are approaching the 15-year limitation period with respect to any demand notes, arrange for your debtor to execute a currently dated promissory note to replace the former note. Do not simply acquire an acknowledgement of the debt.

Accountants should also take extra care when dealing with Promissory Notes given by corporations back to shareholders. Often, these notes are given for tax reasons and no payments are made against them. If there was ever a shareholder dispute it is possible that some of those Notes may be statute-barred.

*The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.*

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