



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

**Demand Promissory Notes**  
**by David L. Edwards & Wade R. Mills**  
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In 2006 the Ontario Court of Appeal surprised lawyers and accountants with the decision of *Hare v. Hare*. The Court held that the statutory limitation period on a demand promissory note runs from the date that the note is signed or issued, and not from the date that the debt was demanded.

Demand promissory notes have been used for decades by lawyers and accountants, particularly in corporate re-organization transactions. Often notes are issued with no expectation of payment for years.

The effect of the *Hare* decision is that a creditor would have lost its rights of recourse against the borrower if the limitation period had already run out, even though the creditor had not yet demanded payment.

Historically, the limitation period for demand notes was six years. Following the passage of the *Limitations Act 2002* (which did not actually come into force until January 1, 2004), the statutory limitation period was reduced to two years. This shortened period increased the number of demand promissory notes which could potentially be statute barred.

Fortunately the Ontario government partially remedied this issue by providing that the limitation period will commence on the "first day on which there is a failure to perform the obligation, once a demand for the performance is made".

Unfortunately this remedial legislation is only retroactive to the date on which the *Limitations Act 2002* came into force. Notes issued before then are subject to the common law and will be statute barred six years after issued.

**The foregoing information 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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