



ACKNOWLEDGEMENTS OF DEBT

In January 2015, Alex lends Rose, his co-lessee, an amount of \$3,000 to help her buy a used car. "I'll pay you back very soon," she promises. No document is signed. Time passes and Rose seems to have forgotten her debt.

In June 2016, Rose, who no longer has a car, is about to move out in order to be closer to the university she attends. Alex finally works up the courage to ask her if she can pay him back. He is worried that Rose thinks he gave her a gift and he does not want to ruin their friendship.

Rose apologizes profusely, and gives him a personal cheque for \$500 bearing the mention "balance of \$2,500 still to be paid." Alex is disappointed, because he was expecting payment in full.

That evening, there is a birthday party for Alex. Rose gives him a birthday card in which she provides her new address. In the card, she writes that their friendship is precious, that she knows she still owes him \$2,500 and that she will repay him in September 2016.

Autumn comes, and so does winter... Alex doesn't hear from Rose anymore. It is only in February 2018, when Alex notices that Rose has unfriended him on Facebook, that he decides to sue her in Small Claims Court in order to claim the balance of the loan.

His friends try to dissuade him, because he does not have a written agreement. Rose argues that she no longer owes Alex anything, because more than three years have passed. In the absence of written evidence, does Alex have a chance of seeing justice done?

Article 2862 C.C.Q. states that proof of a juridical act may not be made, between the parties, by testimony where the value in dispute exceeds \$1,500. Fortunately for Alex, the second paragraph of that article tempers the application of this requirement. If there is a commencement of proof, testimony may be admitted even if the value in dispute exceeds \$1,500.

Article 2865 C.C.Q. defines commencement of proof as follows:

"A commencement of proof may arise from an admission or writing of the adverse party, his testimony or the production of real evidence, where it renders plausible the alleged fact."

Thus, Rose's cheque and card can be considered a commencement of proof in writing. Phew! Alex will be able to prove the existence of the loan.

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



But is it too late to institute legal proceedings? Given that the money was lent in January 2015, is Alex's recourse already prescribed in February 2018, as Rose claims?

Article 2925 C.C.Q. imposes a prescription period of three years within which to claim the repayment of a debt. After this time limit, if no judicial proceedings have been instituted, the debt is extinguished by extinctive prescription. However, prescription can be interrupted.

Article 2898 C.C.Q. states the following:

“Acknowledgement of a right, as well as renunciation of the benefit of the time elapsed, interrupts prescription.”

Fortunately for Alex, the law does not impose specific formalities.

Consequently, Rose's card can be considered to be an acknowledgement of her \$2,500 debt owed to Alex, which came due in September 2016. Prescription will therefore be interrupted and the three years will begin to run again as of that date. Alex's recourse is not prescribed.

Alex is pleased with himself for having held on to the lucky birthday card!

It is wise to set out in writing the terms and conditions of the repayment of a loan or even of a simple acknowledgement of debt. The written document should make the agreement between the parties clear, unequivocal, and formal.

What should a simple acknowledgement of debt contain?

1. The identity of the parties (name, home address, date of birth);
2. The acknowledgement, by the debtor, of his debt towards the creditor;
3. The amount loaned, in numbers and letters;
4. The debtor's undertaking to reimburse the creditor no later than the agreed upon date;
5. The specific date of the repayment (the most important element, often forgotten!)
6. The date and place of signing by the parties;
7. The signature of the parties, in blue ink (to differentiate the original from copies).

Spoken words fly away, written words remain.

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