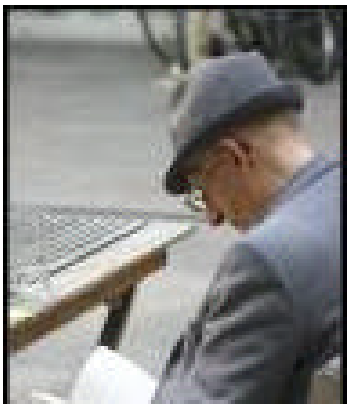
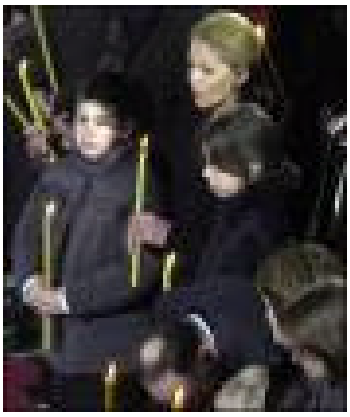
Small Investor Protection Association

A Voice for the Small Investor





Limitation Periods vs Access to Justice

Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005.

May 4, 2006

Small Investor Protection Association

"My parents, ages 81 and 76 … All of the money invested is lost. This was most of my parents' life savings …My father became depressed from losing all of his money. Coupled with the cancer that he had, this caused him to take his own life". – A small investor
Source: e-mail received by SIPA February 2006

May 4, 2006

Standing Committee on Justice Policy
Room 1405, Whitney Block, Queen's Park
Toronto, Ontario, M7A 1A2

Reference: Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005. Hon. Mr. Bryant. (Referred April 11, 2006).

Dear Sir,

We are pleased that the Standing Committee on Justice Policy is reviewing various acts to promote access to justice. Although we missed having the opportunity to make an oral presentation, we appreciate being able to make a written submission.

We are quite concerned that legislation was passed reducing the limitation period from six years to two years. It is improbable that any organization dealing with victims 'issues was consulted prior to passing this legislation.

The Small Investor Protection Association is particularly concerned about the treatment of victims of investment industry wrongdoing, however victims of other life altering events must also receive consideration.

It is absolutely shameful that government is allowing seniors and widows to be victimized by the investment industry and is failing to take measures to afford consumer/investor protection. It is inconceivable that a just society as we claim to be, could allow regressive legislation to pass that erodes the rights of Ontarians and will result in many victims of life-altering events, such as devastating loss of life savings, being victimized again when they are statute barred from seeking resolution of their dispute through civil action due to reduced limitation periods.

Lat August the Small Investor Protection Association (SIPA) in association with the United Senior Citizens of Ontario (USCO) and Canada's Association for the Fifty

Plus (CARP) met with the Attorney General's staff to express concern over the reduced limitation period from six years to two years, and subsequently a petition was presented to the legislature last fall by MPP Joe Tascona. The amendments proposed by the Attorney General do not adequately address the concerns raised.

In a previous report to Government, we had recommended the six-year limitation period be extended for victims of life altering events because some victims already had difficulty meeting the six year limitation period.

There is no authority with a mandate to protect the interests of small investors. That responsibility has been delegated to the industry responsible for the problems. Equally concerning is the fact that there is no government authority responsible for issues affecting seniors, elderly, widows or women, that is au courant with the issue of Ontarians losing their life savings due to widespread wrongdoing in the investment industry.

Many of the victims of investment industry wrongdoing are seniors, widows and other small investors who continue to trust the industry, to trust that the regulators are effective, to trust that Government will ensure that citizens are treated fairly, and trust they can turn to the courts to achieve justice.

The issue of seniors and widows being robbed of their life savings is much greater than most of us can imagine. Victims are often embarrassed that they have been deceived and have lost their savings. Those who do take action and complain, most often resolve their dispute with an out of court settlement agreement including a gag order that keeps the public unaware of the magnitude of this issue.

Access to justice will be curtailed if the limitation period is allowed to stand at two years. This is not sufficient time for victims of devastating loss of life savings to recover from the trauma, to find their way through the current complaints handling process, and to finally initiate civil action as they seek justice.

The limitation period must be amended to save our seniors.

Yours truly

Stan I. Buell, President
Small Investor Protection Association

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THE ISSUE

The issue is the reduction of the Limitation Period for Ontarians to take civil action and how this will negatively impact victims of life-altering events.

We are particularly concerned that the incidence of seniors and other small investors losing their savings due to wrongdoing by the investment industry is much greater than perceived by the general public and our Government.

Indeed, when Senator Grafstein, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, on June 16th, 2005 welcomed Mr. David Brown, Chair of the Ontario Securities Commission, to report on the OSC Town Hall Event said;

> *"The examination of consumer issues has been a revelation for many committee members who thought that all of the problems were well in hand in many areas."*

The evidence accumulated by the Small Investor Protection Association since our founding in 1998 indicates that there is a problem of investors losing their savings due to widespread wrongdoing by the investment industry that has been covered up for far too long. The public believes, as did many of the Senators until recently, that the investment industry is well regulated and investors are protected.

However, while all the regulators claim that investor protection is important and central to their mandates, they admit that their approach is preventative in nature and they can t get aggrieved investors 'money back. They admit that they are only responsible for disciplining those who breach the rules and that aggrieved investors need to seek resolution of their dispute by taking civil action.

Bill 213, Justice Statute Law Amendment Act, 2002, enacted the Limitation Act, 2002, which provides for a reduction in the legal limitation period, from six years to two years. This reduction in limitation period will prejudice the rights of victims of life-altering events.

The loss of life savings is such a life-altering event.

Recently we received an e-mail from an Ontarian indicating that his father had suffered a substantial financial loss along with other members of the family due to wrongdoing. He wrote:

> *"My parents, ages 81 and 76 … All of the money invested is lost. This was most of my parents 'life savings …My father became depressed from losing all of his money. Coupled with the cancer that he had, this caused him to take his own life". – A small investor*
> *Source: e-mail received by SIPA February 2006*

This is not an isolated case. You will not read about it or thousands of other similar cases in the newspapers. Victims do not readily admit that they have been deceived and robbed of their savings. Many suffer in silence. Others choose to end their life.

Those victims that do take action to try to recover some of their losses do not speak out. They do not want family and friends to know about their issue. Often they are able to resolve their dispute, but to obtain a settlement are required to sign a gag order so they can not speak out.

The Limitation Act was passed in an Omnibus bill without discussion. No reference was made to consumer organizations or those that are concerned about the protection of consumer/investors. Yet industry was involved.

Our association learned of the reduced limitation period after the fact, in April 2005. Participating in a panel for the OSC Town Hall Event, we raised the issue at a planning meeting with David Brown, Chair Ontario Securities Commission, Joe Oliver, President Investment Dealers Association, Larry Waite, President Mutual Fund Dealers Association, and Michael Lauber, Ombudsman for Banking Services and Investments. All were aware of the issue but none seemed concerned about the potential impact on aggrieved investors.

Research indicates that the investment industry and corporate lawyers were well aware of these developments and had contributed to the legislation, but there seemed to be no involvement of consumer groups or any agency representing consumer/investor interests.

However, the United Senior Citizens of Ontario (USCO) and Canada's Association for the Fifty Plus (CARP) are concerned about the potential impact on seniors who suffer life-altering events and should have the right to seek justice by taking civil

action. They know that two years is not enough time for seniors to recover and take civil action.

SIPA raised the issue with CARP and the USCO, two of the largest groups representing seniors in Ontario. They also were unaware of the issue and had not been consulted by anyone.

So just who is looking after consumer/investor protection?

The provincial government claims the Ministry of Finance is responsible and they delegate to the Ontario Securities Commission (OSC). The OSC delegates to the Self Regulatory Organizations that supposedly regulate the industry. However, they also represent the industry so there is an inherent conflict of interest.

Could we expect the OSC to give priority to investor protection? Could we expect that the Chair of the OSC, formerly with ScotiaMcLeod, would give priority to investor protection? Could we expect the SROs to give priority to investor protection?

The regulators admit that they consider investor protection to be preventative rather than remedial, and seek a balance between investor protection and fostering capital markets. There is no authority that gives priority to investor protection.

The Standing Senate Committee on Banking, Trade and Commerce received submissions from stakeholders and the Small Investor Protection Association appeared before the Senate Committee for the first time on April 14th, 2005, to speak on behalf of consumer/investors. We mentioned that the OSC was holding an Investor Town Hall Event in Toronto the end of May. The Senate Committee was interested in receiving a report on the event.

When the former chair of the OSC, David Brown, appeared before the Standing Senate Committee on June 16th to report, the Chairman Senator Jerahmiel S. Grafstein said;

> *"Welcome. Our first witness today is Mr. David Brown, Chair of the Ontario Securities Commission. … The examination of consumer issues has been a revelation for many committee members who thought that the problems were well in hand in many areas."*

SIPA had submitted a 20 page report, It's a Matter of Trust, to the Senate Committee, which surely was a revelation for anyone not familiar with the

workings of the industry. It provided evidence of widespread wrongdoing and pointed out the failure of the regulatory system to provide adequate investor protection.

At the Chairman's invitation Mr. Brown made the following opening remarks;

"Honourable senators, thank you for allowing me to appear today to discuss the Ontario Securities Commission Investor Town Hall, which we held on May 21 in Toronto. Mr. Stan Buell, President of the Small Investor Protection Association, mentioned it in his testimony to you. Mr. Buell participated with me on the town hall panel, with Mr. Michael Lauber, from the Ombudsman for Banking Services and Investments; Mr. Joe Oliver, from the Investment Dealers Association; and Mr. Larry Waite, from the Mutual Fund Dealers Association of Canada.

More than 400 people attended our first town hall meeting, most of them from the Greater Toronto Area. Others came from across Southern Ontario, including London, Huntsville and Gloucester. Another 35 listened to our live webcast. Each panelist made brief remarks. However, most of the event was an interactive question-and-answer session with the audience.

I believe that Senator Moore asked Mr. Buell if we would prepare a report on the town hall meeting. I can assure senators that we will do so at the end of June. I gave that assurance to those who attended the meeting. I will ensure that committee members receive copies of that report.

The need to give retail investors an opportunity to voice their criticisms of and concerns with the regulatory process became apparent last summer during hearings of the Ontario Ministry of Finance Standing Committee on Finance and Economic Affairs, SCFEA. The town hall meeting underscored the fact that too often the system that is supposed to address the grievances of investors has been a source of frustration instead. Many investors do not know where to turn. Among many who have the knowledge there is a lack of trust. That being said, we want to improve our understanding of the challenges facing retail investors.

While securities regulators have made it a priority to pursue investor protection issues, such as corporate governance, it is increasingly apparent that there is a need to place more emphasis on providing protection to the investor as a consumer of financial services. We must ensure that the system can respond to investors who have legitimate grievances. We must ensure that investors are able to access the system easily. First, we must identify the issues that are important to investors.

The town hall meeting was a start toward achieving those goals. We will be building on that, working closely with investors and other participants in the

regulatory system. We can do that in three ways: First, we can provide more opportunities for investors to raise issues and to participate in addressing them. Second, we can convey to provincial governments the concerns we hear and advise them on possible legal and policy changes that we may deem justified. Third, we can introduce changes to the system that will help investors take advantage of the available options. Investors voice numerous concerns, which we will research to better understand the scope of the issues.
For now, I will summarize some of the things we heard and some of the things we are doing about them."

Mr. Brown's complete summary is available elsewhere but his remarks on Limitation Periods were;

"One frustration that retail investors have raised is the limitation on investor suits. Under the Ontario Limitations Act 2002, a uniform two-year limitation period applies to all actions except those that are specifically carved out, such as actions by the OSC.
Unfortunately, this two-year limitation period leaves plaintiffs with a narrow window for bringing an action. Although a number of considerations pause the clock, we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have elapsed. For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these reasons, we suggested to the Ontario government that it would be well advised to take another look at this two-year cut-off. The town hall meeting confirmed that investors have both complaints and ideas on to deal with them. It would make sense to take advantage of their expertise. Currently, the OSC has several advisory bodies and will begin immediately to establish an investor panel to provide advice and commentary on an ongoing basis."

Mr. Brown seems to fully understand the issue and suggested that the Ontario government should re-visit this issue.

We believe the government must consult the people of Ontario and the organizations that represent them rather than simply follow recommendations of an industry that has proven to be deceitful and corrupt in its dealings with small investors.

The mutual fund market timing scandal shows the extent of wrongdoing when eight of Canada's largest financial institutions paid over $200 million for their participation in that scandal. Canadian firms have paid billions of dollars to U.S. regulators to settle allegations of wrongdoing and cover up details from the public.

Recent scandals with mutual funds, hedge funds and other products developed to avoid regulations and rob investors of their savings illustrate the cavalier attitude of the investment industry towards seniors and their savings, and the absolute failure of the current regulatory system to protect investors.

The financial fiascos with Portus and Crocus alone have impacted more than 50,000 investors. Almost every Canadian was affected by the Bre-X scandal yet no one has ever gone top jail.

Investors are left on their own to resolve their disputes.

There are industry or industry sponsored dispute resolution mechanisms such as the IDA Arbitration Program and the Ombudsman services including the Ombudsman for Banking Services and Investments, but not surprisingly these mechanisms display a bias towards the industry.

Ultimately the aggrieved investor must rely upon civil litigation to attempt to gain justice. Now their right to this last resort is being eroded by the reduction of the limitation period.

This failure of government to explore the impact in individuals and consult with organizations concerned about victim impact and welfare of seniors and elderly has led to a situation that if not corrected with an amendment to the Act will result in thousands of victims being statute barred from seeking justice through civil litigation.

THE COMMENTS

Since learning of the reduced limitation periods in early 2005, SIPA has been speaking out and attempting to raise awareness of the limitation period issue.

On April 29th, 2005 SIPA wrote the Ontario Attorney General and said;

> *"We are deeply concerned about reductions in the limitation periods introduced in 2004. The previous limitation periods were six years for breach of contract and for negligence. There was no limitation period for claims based on breach of fiduciary duty. These limits are now two years and fifteen years.*
> *Most victims of industry wrongdoing, that results in significant loss of their life savings, take more than two years to come to grips with this life-altering event, and to determine what action they must take.*
> *The reduced limitation periods are inappropriate and unacceptable for those who have been victimized by the financial services industry. We request that this legislation be revised so that prior limitation periods are restored to prevent victims from being once again victimized because government fails to provide adequate means of redress."*

On May 3rd, 2005 SIPA wrote to MPP Gerry Philips, chair of the Standing Committee on Finance and Economic Affairs stating;

> *Last year the Ontario government quietly reduced the Statute of Limitation from six years to two years.*
> *With regard to the limitations period, most victims of financial predators take several years to realize that the reasons for their loss are more related to industry wrongdoing than market risks. Canadians tend to believe they can trust the investment industry and believe the hype they hear, and that they can trust our government to provide a regulatory system that provides investor protection. Indeed the hype suggests that investor protection is central to regulation.*
> *With the fractured and complex regulatory system that exists today it takes small investors time to determine what the procedures are. Industry is slow to respond and most victims spend several years following industry and regulatory advised procedures before realizing that civil litigation is the only recourse. To reduce the limitation period to two years is prejudicial to the investor's rights and this must be corrected.*

In May, 2005 SIPA had a telephone call from a single mother of two who lost her life savings of over $300,000 in the year 2000. It has taken her time to deal with

the issue and she confessed that she had been suicidal. Since then she has dealt with industry and the regulators. Her question was should she now try to approach OBSI. As she is in danger of exceeding the six year limitation period, that should apply since the event preceded the new legislation, it was recommended that she immediately contact a securities litigation lawyer and ask about how limitation periods would apply in her situation.

At the Town Hall Event on May 31st, 2005 a senior lady stated that they had lost $170,000 of their life savings in two years when they placed their trust in one of Canada's bank owned brokerages. They agreed to a settlement of $30,000 and signed a gag order. This prevents the public from learning which banks are robbing seniors and widows, and enables the industry to continue their perverse practices of robbing those who place their trust in them. The following is from the transcript of the OSC Town Hall Event;

"MIKE HORNBROOK: We have another question up here. Oh, I'm sorry, I missed that.
UNIDENTIFIED FEMALE SPEAKER: Yeah, I tried to--... Oh, it echoes. I tried to condense five years of frustration into five pages, but I'm not going to be allowed to read it. So I'll read you the last paragraph, I guess.
LINDA LEATHERDALE: [inaudible] your name.
JANET GILLIS [phon]: Janet Gillis. When I was young, your bank manager was the most respected member of your community. Your life savings were safe in a bank. That is not the case in today's world. There are scandals almost every week. It is time for our government to prosecute these officials, and help small investors regain their confidence that their life's savings are in safe hands in banks. We lost a third of our life's savings in less than two years, and it took us 15 years to accumulate this money in mutual funds. And we were with a small outfit, and we went to a bank that we'd had an account with for 30 years, a respected bank, one of the top banks in Canada, and we put all of this 15 years of life's savings in their hands, in their mutual funds, and we lost a third of our life's savings. I mean, we were devastated. And--
MIKE HORNBROOK: I'm sorry. You go ahead.
JANICE GILLIS: Well, I guess there's nothing that can be done.
MIKE HORNBROOK: We have to--... we can't ask you specific questions about what funds they were, what bank--
JANICE GILLIS: Oh, no, no.
MIKE HORNBROOK: I'm wondering if we could have a response from one of our panelists. David Brown.

DAVID BROWN: Well, as Mike Hornbrook said, we can't ask you specifics, but it would really help us if -- and it would help me to understand where the system has apparently failed you -- if you could describe what efforts you took to get your money back.
JANICE GILLIS: [inaudible]... to everyone involved, and all we got back out of the... In less than two years, we lost $170,000. They gave us back our fees -- $30,000 fees. That's what we got back. And this is why I'm upset. Oh, and we'd signed a release to get that cheque for $30,000, and the bank has told us they'll take us to court if I make it public."

This lady made it clear they had trusted their bank, they were devastated by the loss of one third of their savings in two years, and to get a small fraction back they had to sign a gag order.

In Brown's opening remarks at the town hall event on May 31st, 2005 he said;

"We've become increasingly aware that we may not have placed sufficient emphasis on protecting the investor as a consumer of financial services, and that includes assisting people to obtain restitution when they've been badly dealt with by the system. The need for making this a greater priority was underscored last summer, in testimony that was given to the Legislature Standing Committee on Finance and Economic Affairs. Consumers of financial services must have available to them an effective, fair means of seeking satisfactory resolution of their complaints."

And in response to a question from the Town Hall audience Brown replied;

"You're quite right -- the Ontario Securities Commission does not have restitution power. We do not have the ability to assist you in getting your money back. That is really something that has to be done through the private courts, or through the courts, and you need to consult a lawyer, in order to be able to figure out what your best route is."

on June 16th, 2005 David Brown reported to the Standing Senate Committee on the Town Hall event and said;

"we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have elapsed. For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these

reasons, we suggested to the Ontario government that it would be well advised to take another look at this two-year cut-off. "

On June 27th in our letter to the Standing Senate Committee on Banking Trade and Commerce we said;

"Since our appearance before the Senate Committee on Banking Trade and Commerce on April 14th, we became aware that the Ontario Limitations Act has surreptitiously reduced the six-year limitation period to two years. We believe this is a serious issue for Ontario investors and may be an important issue for all Canadians.

Presumably, those who are responsible for consumer protection must know that life-altering experiences, including the loss of one's entire life savings when one is trusting that our investment industry and regulatory system can be trusted to safeguard one's savings, have a severe impact on individuals.

So severe is this impact that some victims have chosen suicide, rather than to continue life in this wonderful country of ours, after their trust has been betrayed by the financial services industry, and their hopes and dreams destroyed.

Many of the victims (when they are finally able to deal with this type of issue) routinely take more than two years to find their way and learn how the regulatory system works.

With a two-year limitation period it is obvious that many victims will be time barred from the courts from seeking restitution even when some of the industry's practices may be criminal in nature. Is this justice? "

On June 28th Diane Francis wrote in the National Post;

"Investors seeking redress forced into Catch-22

Shorter limitation period leaves even fewer choices

The move by some provinces to reduce the limitation period for lawsuits from six to two years tips the playing field even more against investors and in favour of the bank-owned brokerage industry.

In Canada, a damaged investor has two remedies: A lawsuit or a complaint to the Ombudsman for Banking Services and Investments (OBSI). This is not an autonomous government-funded agency but a dispute resolution service offered by the banks and brokers themselves in the hopes of averting expensive litigation.

This process is not only unacceptable, because ombudsmen should be truly independent, but it's also arduous. Before an investor can benefit from this "service" he or she must proceed through the accused bank-owned

brokerage firm's manager, compliance officer and then the individual ombudsman of the bank involved.
Once all that's finished, then the investor may take the case to the Ombudsman for Banking Services and Investments. But OBSI won't accept a case if the investor has already sued.
All of which amounts to a Catch-22 because there is no way an investor could possibly jump through all those bureaucratic hoops within two years. And with the statute of limitations being shortened, investors don't have choices.
Likewise, Canadian investors will find they have no legal remedy if they go to regulators such as the Ontario Securities Commission. That's because investigations often take more than two years, by which time they will have lost the right to sue."

On July 21st, 2005 Wojtek Dabrowski wrote in the National Post;

"Tory MPP on side with extending limitation
TWO YEARS TOO SHORT A PERIOD

Joe Tascona, the opposition critic to Attorney General Michael Bryant, launched a petition yesterday to strike down the two-year limit that applies to investors who lost money due to wrongdoing of the financial-services industry.

Ontario's Limitations Act of 2002 cut the time during which such legal action can be launched to two years from six. the Act was proclaimed in January, 2004.

"There's a lot of concern about this," said Mr. Tascona, "and I think that once the public of all ages becomes aware of the situation, they're going to look for some better representation and better response from the Attorney General."

Valerie Hopper, a spokeswoman for the Ministry of the Attorney General, said, "We're looking at everything right now, just monitoring [the legislation], seeing what the effects are and seeing if it's doing what it's supposed to be doing."

Ms. Hopper added that changing the limitation period has not been ruled out."

On July 18th Steven Lamb wrote for Advisor.ca;

"Ontario's small investors and seniors are being hung out to dry by the current statute of limitations on civil litigation for breach of trust, according to a group of investor advocates. The advocates and the province's official opposition critic today called for the repeal of the Limitations Act, 2002.

The call to repeal the law was made in a joint press conference involving Stan Buell, president of the Small Investors Protection Association (SIPA), Judith Muzzi, president of United Senior Citizens of Ontario, Bill Gleberzon of Canada's Association for the Fifty Plus (CARP) and Conservative MPP Joe Tascona, of the Barrie-Simcoe-Bradford riding.

The Limitations Act, 2002 reduced the statutory limitation on suing over breach of trust to two years from six. The two-year limitation does not apply to acts of fraud, which are covered by the Criminal Code.

"We don't feel that's a sufficient period because of the amount of money involved in this industry," says Tascona.

"Those who try to follow the industry process take a long time to get through the process — quite often more than two years," Buell said. "The two-year limitation on taking civil action is just not enough, particularly for seniors."

"This change is just another form of financial elder abuse," said CARP's Gleberzon. "Like the others on this panel, we urge the government to reconsider the legislation — to at least reinstitute the former time period."

On September 10th 2005 SIPA wrote Premier Dalton McGuinty;

"We are concerned that the Ontario government is making legislative changes without reference to the stakeholders, and that these changes will have a major impact on the lives of ordinary Ontarians.

As an example the Ontario Limitations Act was proclaimed without reference to the organizations that represent Ontarian's interests. As a result many Ontarians will suffer from the reduction in Limitation Periods because those who made the decision did not realize the implications for victims of life altering events.

Canada's Association for the Fifty Plus (CARP) and the United Senior Citizens of Ontario (USCO) represent some 500,000 Ontarians and they recognize the negative impact on seniors. A letter from Mr. Larry Waite, President of the Mutual Fund Dealers Association summarizes the potential negative impact."

Many people are speaking out against the reduction in limitation periods.

THE ACTION

The Limitation Act was passed in an Omnibus Bill without due consideration or discussion. The needs of victims of life altering events was overlooked.

Organizations representing the interests of consumer/investors were not consulted and as recent as April of 2005 were not aware that the limitation period had been reduced.

On May 19th, James Daw wrote in the Toronto Star;

> *"Like Buell, many others would not realize the Limitations Act has been changed. Lawyers have written columns for smaller newspapers and professional journals about the updated act, but this will be the first time the changes have been mentioned in the* Toronto Star. *"*

Legislators appear to have relied upon the part of the legal profession that represents corporate interests, and failed to consider how the reduction of the limitation period could impact on ordinary Ontarians.

Now that legislators have been informed and elected representatives made aware of how the reduced limitation periods will negatively impact upon victims of life-altering events, an amendment is required to restore the limitation period to six years so that victims will not have their right to take civil action eroded by a statute that unfairly prevents them from seeking justice.

On June 16th, 2005 Senator Grafstein said to Mr. Brown;

> *"Mr. Brown, I have a final question. We have come to grips with the question of the slowness in creating one securities commission. There is a general view around this table. The federal government has been on this case now — I myself have been involved — for over 40 years, and we are not much closer to having one central authority.*
> *Our other option, where the progress is slow but sure and hopefully inevitable, is to accelerate the creation of a central prosecution mechanism, because we can clearly do that under the Criminal Code. We are about to hear from IMET about that.*
> *What is your view of a central, federal prosecution mechanism, armed with information from the various securities commissions and exchanges such as yours, and supported by these task forces so that there can be a greater focus?*

> ***Mr. Brown:*** *I am not sure I understand how you would see things differently. The RCMP is a federal law enforcement agency. I would have thought that that at least fits part of your definition of a central authority.*
> ***The Chairman:*** *It does.*
> ***Mr. Brown:*** *Are you talking about having the federal Attorney General take over responsibility from the provincial Attorneys General for the actual prosecutions?*
> ***The Chairman:*** *I am talking about a more centralized prosecution mechanism. I am not suggesting it should be the Attorney General of Canada, but it should be a central mechanism by which the federal government coordinates with provinces, because we do have federal and provincial prosecutors dealing with the same laws. The province can exercise its right to prosecute a breach of the Criminal Code, as can federal prosecutors. In some instances, they share responsibility. The issue is to bring all the expertise together in one place so that, as you say, it is cost-effective. ”*

It may be that if the Ontario Government is unable or unwilling to provide investor protection and to avoid eroding Ontarian's rights, the time has come for the federal government to provide a centralized prosecution system to protect small investors.

It's time for Ontario to act responsibly and amend the Limitation Act that so clearly erodes the rights of Ontarians.

In the words of Larry Waite, President of the Mutual Fund Dealers Association in his letter dated August 8, 2005 to the Hon. Michael J. Bryant;

> *“We believe that investor protection would be enhanced in Ontario if the Limitations Act 2002 were amended to reinstate the former 6-year time window for commencing civil actions. We encourage the Government of Ontario to restore the prior limitation period. ”*

We agree.

The Ontario Government must restore the previous limitation periods or exempt victims of investment

APPENDIX

Copies of documents referred to in our submission are appended for reference. These documents include correspondence, media articles, and excerpts from transcripts of hearings and events arranged in chronological order.

Small Investor Protection Association

LEGAL OPINION ON THE LIMITATIONS ACT PROVIDED TO SIPA

The new Limitations Act certainly does affect Ontario investors seeking compensation.
In Ontario, the old limitation periods were 6 years for breach of contract and for negligence. There was no limitation period for claims based on breach of fiduciary duty (this was not the case in those provinces whose Limitations Acts specified time limits for fiduciary duty claims).
Essentially, the new Act puts the following regime in place:

(a) If the wrongdoing occurred after 2003, you must commence any lawsuit within two years of the date when you found out or reasonably could have discovered that you've been harmed, who harmed you, and that a lawsuit would be "an appropriate means to seek to remedy" the harm. It will be presumed that you knew all these things on the date when the harm occurred, unless you can prove otherwise.

(b) No lawsuit can be commenced more than 15 years after the wrongdoing occurred.

(c) There are transitional provisions covering wrongdoing that occurred before 2004. For the most part, the old limitation periods apply to claims relating to such matters.

As you can see, the old limitation period for claims based on breach of contract or negligence has been altered and effectively shortened to two years in most new cases. The new Limitations Act expressly applies to all types of claims, so the 2-year basic limitation period and the 15-year "ultimate limitation period" both apply now to fiduciary duty claims, as well.
In highly exceptional situations (i.e., the investor was prevented from commencing a lawsuit due to some significant and provable physical, mental or psychological incapacity), it may be possible to extend the limitation period.
As a practical matter, investors need to be very careful not to let the new limitation period expire while their complaints (to the dealer or to a regulator) are being investigated. Investors complaining about post-2003 wrongdoing should assume the limitation period will expire 2 years after the harm occurred, and the filing of a complaint does not -- I repeat DOES NOT -- stop the limitation period from expiring. Only the commencement of a lawsuit will do so.
[An agreement to let an independent third party mediate or arbitrate the dispute will suspend advancement of the limitation period for the duration of the arbitration or mediation process, but if that process fails to resolve the dispute, the limitation period countdown resumes where it left off. A regulator such as a securities commission or the IDA would not be considered to be a mediator or arbitrator for this purpose, so complaints to them will not suspend the limitation period. Is OBSI sufficiently independent for this purpose? Probably not. Accordingly, investors would be unwise to rely on a complaint to OBSI as a mechanism to suspend advancement of the limitation period.]
Once the limitation period expires, it cannot be revived. The ability to seek compensation through the courts is lost forever.

Regards,
Neil Gross
CARSON GROSS CHRISTIE KNUDSEN, Barristers and Solicitors
Suite 600 - 10 Carlson Court, Toronto, Canada M9W 6L2
Tel.: (416) 361-0900, Fax: (416) 361-3459, e-mail: ngross@cgck.com

Small Investor Protection Association

LETTER TO ONTARIO ATTORNEY GENERAL – APRIL 29, 2005

April 29, 2005 by e-mail: attorneygeneral@jus.gov.on.ca

The Honourable Michael J. Bryant, Attorney General
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON, M5G 2K1

Re: Ontario Limitations Act

Dear Minister,

We are deeply concerned about reductions in the limitation periods introduced in 2004.

The previous limitation periods were six years for breach of contract and for negligence. There was no limitation period for claims based on breach of fiduciary duty. These limits are now two years and fifteen years.

Most victims of industry wrongdoing, that results in significant loss of their life savings, take more than two years to come to grips with this life-altering event, and to determine what action they must take.

Handling of complaints by industry participants, the OSC, SRO's, and Ombudsmen services commonly cause delays that may take several years. There is no evidence that OBSI 's investigations into claims would stop the limitation clock, and OBSI will not consider restitution claims until they have progressed through lengthy time- consuming industry and industry sponsored processes.

The reduced limitation periods are inappropriate and unacceptable for those who have been victimized by the financial services industry. We request that this legislation be revised so that prior limitation periods are restored to prevent victims from being once again victimized because government fails to provide adequate means of redress.

We ask that you meet with our delegation to hear our limitation period concerns.

Yours truly

Stan I. Buell, P.Eng.
President

cc Nikki Holland - nikki.Holland@jus.gov.on.ca
cc W.Gleberzon – CARP Director - w.gleberzon@50plus.com
cc Ken Kivenko – Chair SIPA Advisory Committee – KenKivenko@sipa.to

Small Investor Protection Association

LETTER TO HON. GERRY PHILIPS – APRIL 29, 2006

April 29, 2005 By e-mail to: gphillips.mpp@liberal.ola.org

Hon. Gerry Phillips
Queen's Park
Management Board Secretariat
77 Wellesley St W, 12th Floor, Ferguson Block
Toronto ON M7A 1N3

Re: Limitation Periods

Dear Sir:

We continue to be concerned about the lack of protection for small investors.

The mutual fund market-timing scandal illustrates widespread practices that enrich major investment institutions at the expense of small investors, the Gomery testimony suggests corruption may infiltrate our government and the ASC scandal indicates corruption may also affect our regulatory system.

We are now investigating whether Ontario's reduced limitation periods will apply to investment issues. To reduce the limitation period from six years to two years would be totally inappropriate and unacceptable relative to investor protection.

We have asked the OSC for clarification on this issue but have not yet received a response.

It would be irresponsible to reduce limitation periods relating to investment issues. Aggrieved investors who have lost most of their life savings are so traumatized by events that it often takes several years for them to be able to deal with the issue and general several years to find their way through our fractured and arcane regulatory system and industry sponsored complaint handling processes.

We ask that you provide us with assurance that the limitation periods will not be reduced for issues relating to small investors investments, without undue delay.

Sincerely

Stan I. Buell
President

cc. Hon. Greg Sorbara – by e-mail to: gsorbara.mpp@liberal.ola.org

Small Investor Protection Association

LETTER TO HON. GERRY PHILLIPS – MAY 3, 2005

May 3, 2005 by e-mail; gphillips.mpp@liberal.ola.org

Hon. Gerry Phillips
Queen's Park
Management Board Secretariat
77 Wellesley St W, 12th Flr, Ferguson Block
Toronto ON M7A 1N3

Dear Sir:

In our last letter to you dated October 8th, 2004, we said "Consumer protection is a national issue and must be taken up by the federal Government since provincial governments have failed to provide investor protection."

We acknowledge that you said "I think we need to provide the best possible investor protection … So consumer protection, simple common consumer protection, I think is best handled by a single, national, common regulator." We absolutely agree.

However we are becoming alarmed by recent revelations and developments.
In December 2004 it was revealed that eight of our largest investment institutions were found to engage in mutual fund market timing that took from small investors and lined the pockets of industry. This reveals the investment industry's widespread wrongdoing and a cavalier attitude towards the small investor.
Earlier this year the Gomery Commission testimony began to reveal that corruption is rife and extends into our Government. The former prime minister tried to stifle Justice Gomery and make a mockery of the inquiry.
Recently the Alberta Minister of Finance, the Hon. Shirley McClellan, has ordered an independent inquiry to investigate allegations of Alberta Securities Commission wrongdoing brought forward by ASC staff. The ASC has fired Grahame Newton, and he is believed to be one of those who dared to come forward.
Last year the Ontario government quietly reduced the Statute of Limitation from six years to two years. We are continuing to seek clarification on this issue.

We fully agree with you that our financial services industry regulatory system should focus on investor protection and that a national regulator can best serve all Canadians. We also believe that investor protection can only be provided by an independent investor protection agency, as recommended in the CARP/SIPA Report of September 2004.

However, we are concerned that investor protection is being eroded by an industry that lacks honesty and integrity and seems to have no sense of what is right and what is wrong.
Regulators confide that industry tries to justify all of their actions by saying "show me a rule that says it is wrong." The industry maintains that market timing is legal. They do not see that robbing the poor to pay the rich is fundamentally wrong.

We are also concerned that the government is failing to realize that white collar crime is not a victimless crime. The seniors, widows and others, who spent a lifetime accumulating savings that are destroyed in a heartbeat by a callous investment industry, suffer in untold ways without hope of recovery.

On February 14th 2005, we made a submission to the Senate committee. Our submission concludes:
Government must take action to enable Canadians to trust. Canadians need:
One national Financial Services Regulator
A national Investor Protection Agency
A national register of representatives accessible to the public

SIPA asks that the Senate call for an inquiry into this problem of investors losing their life savings due to investment industry widespread practices of wrongdoing.

A copy of our submission is appended for your reference.

In light of the market-timing scandal, Adscam, and the ASC scandal, Ontario should lead the way by ordering an independent inquiry into the provincial financial services regulatory system. A simple review of the findings of the regulators themselves would confirm the need for an inquiry.

The ASC scandal illustrates that there must be independent oversight of the activities of the regulators and that government must legislate TruthTeller protection immediately. We have already witnessed the death of Kent Shirley who came forward with allegations of wrongdoing yet the regulators are strangely silent on this issue. Now Grahame Newton has been fired. Government must act to provide protection.

With regard to the limitations period, most victims of financial predators take several years to realize that the reasons for their loss are more related to industry wrongdoing than market risks. Canadians tend to believe they can trust the investment industry and believe the hype they hear, and that they can trust our government to provide a regulatory system that provides investor protection. Indeed the hype suggests that investor protection is central to regulation.

With the fractured and complex regulatory system that exists today it takes small investors time to determine what the procedures are. Industry is slow to respond and most victims spend several years following industry and regulatory advised procedures before realizing that civil litigation is the only recourse. To reduce the limitation period to two years is prejudicial to the investor's rights and this must be corrected.

Why then do so many widows lose their life savings when it seems so apparent that capital preservation is of paramount importance?

Why does the industry spend more on legal fees than the stated loss in a complaint?

Why does the industry cover up the extent of losses?

Why is the industry allowed to continue to mislead the public?

If it is indeed Investor Beware, why doesn t the government educate the public to this fact?

If the public is supposed to place their trust in the industry, why doesn t the government take appropriate action to ensure that trust is not betrayed?

We are particularly concerned that investors are not receiving fair treatment and that enforcement is either unwilling or unable to act to provide appropriate protection. SROs should not carry the mandate for investor protection.

We ask what is being done about:
Providing non-industry sponsored dispute resolution mechanisms that are timely and fair
Determining the extent of complaints and investor losses to enable this issue to be placed in proper perspective
Establishing a regular audit of the enforcement regime
Extending the limitation period for abused investors

It would be appreciated if you would provide your response prior to the Town Hall Meeting scheduled for May 31st in Toronto.

Yours very truly

Stan I. Buell, P.Eng.
President

Minister of Finance, Hon. Greg Sorbara, – gsorbara.mpp@liberal.ola.org
Attorney General Michael J. Bryant - attorneygeneral@jus.gov.on.ca
Premier Dalton McGuinty - Dalton.McGuinty@premier.gov.on.ca

TORONTO STAR ARTICLE BY JAMES DAW – MAY 19, 2005

From the Toronto Star
May 19, 2005

Investors face 2-year limit for lawsuits

JAMES DAW

Ontario investors could be disadvantaged by the province's two-year limitation period for filing most lawsuits, warns a vocal investor advocate.

Stan Buell, president and founder of the 500-member Small Investor Protection Association in Markham, was surprised to learn recently that Ontario quietly changed its Limitations Act effective Jan. 1, 2004.

He suspects inexperienced investors who happen to suffer heavy losses because of negligent or dishonest actions of a financial adviser would not be prepared to file a suit within two years of discovering their loss.
"Most victims of industry wrongdoing that results in significant loss of their life savings take more than two years to come to grips with this life-altering event, and to determine what action they must take," he argues.

Months can pass while victims seeks answers from advisers, their supervisors or an industry-sponsored ombudsman or self-regulatory body. Further time could be lost raising money to pay a lawyer.

A two-year period — one third of the former limitation period for actions over negligence — could slip by before the investor realized that there even is a limitation period, warns Buell.

It's impossible to test his suspicion because the first day anyone would be affected by the two-year limit is still more than seven months away. But six years was too soon for some people in the past.

Like Buell, many others would not realize the Limitations Act has been changed. Lawyers have written columns for smaller newspapers and professional journals about the updated act, but this will be the first time the changes have been mentioned in the *Toronto Star.*

Several different limitation periods set out in the Securities Act, including a six-year limit for enforcement actions taken by the Ontario Securities Commission, were not affected by the Limitations Act changes.

But lawyers have told Buell that suits over breach of contract and negligence must now be filed within two years of finding you were harmed, or from when you should reasonably have discovered the harm.

The deadline can be extended for up to 15 years if a person is able to prove he or she was incapable of suing sooner because of a significant physical, mental or psychological problem.

It's also possible to stop the clock if both the plaintiff and defendant agree to submit their dispute to an independent mediation or arbitration process. But Buell was told it is debatable whether the industry-sponsored Ombudsman for Banking Services and Investments would be considered independent enough to stop the litigation clock.
Buell knows from personal experience how long it can take to consider a lawsuit after suffering heavy losses, as happened to him while he was working out of the country in the 1980s.

His lawyer at the time, Peter Jervis of Lerners LLP in Toronto, agrees with Buell that a two-year limitation period is "grossly unfair" for investors and for other victims of professional negligence. "It protects major corporate players and hurts the little people," said Jervis, adding that he is contacted regularly by individuals more than two years after they suffered losses.

Members of the Investment Dealers Association of Canada reported 499 civil claims last year, nine criminal charges and 1,276 customer complaints, including 776 complaints about unsuitable investments, 231 about unauthorized trading, 79 alleging misrepresentation and 38 alleging transfer of accounts.

Connie Craddock, vice-president of public affairs for the IDA, said data is not collected on the average time it takes small investors to file a statement of claim. "We weren't even consulted (about the changes in the Limitations Act)," she said, but she pointed out that memories fade and evidence may be lost if it takes too long to bring a civil suit to court.

Buell has urged Attorney-General Michael Bryant to restore the six-year limitation period eliminated by the former Tory government.

"The reduced limitation periods are inappropriate and unacceptable for those who have been victimized by the financial services industry," he wrote to Bryant, who has yet to respond.

In the meantime, Buell's group is urging visitors to its website to consult with a securities lawyer to seek clarification on the impact of the Limitations Act as soon as they suspect a problem.
Ultimately, Buell would like to see the creation of an independent investor protection agency to register complaints and legal settlements reached with investment advisers, and to make restitution orders.

E-MAIL TO MPP FRANK KLEES – MAY 20, 2005

Mr. Klees,

It was a pleasure to meet with you this morning. Thank you for listening to Ed and me.

We are pleased to hear that you introduced a private member's bill regarding limitation periods for another issue.

We find it difficult to understand who would have supported reducing the six year limitation period to two years for consumers' issues. There are many issues where this shortened period is totally inappropriate.

SIPA's focus is investor protection and we believe this reduced limitation period will result in many victims of investment industry wrongdoing being disqualified from commencing an action because they will not be able to deal with the impact of losing their life savings and commence an action within a two-year limitation period.

As promised we are appending an informal legal opinion which clearly outlines the consequences of this reduced period for victims of investment issues.

It is untenable that the regulators that claim to provide investor protection have allowed this legislation to proceed and have failed to alert the public that the law has changed.

Many Canadians are not aware of limitation periods at all, and those that are believe it is six years. Many victims have difficulty taking action within a six year period.

Victims of extreme financial loss are often suicidal and it takes several years for them to overcome this traumatic event and several more years to deal with the issue before they can take action.

Just this week I had a telephone call from a single mother of two who lost her life savings of over $300,000 in the year 2000. It has taken her time to deal with the issue and she confessed that she had been suicidal. Since then she has dealt with industry and the regulators. Her question to me was should she now try to approach OBSI. As she is in danger of exceeding the six year limitation period, that should apply since the event preceded the new legislation, I recommended that she immediately contact a securities litigation lawyer and ask about how limitation periods would apply in her situation.

With a two year limitation period victims can not waste time complaining to regulators or attempting to use industry sponsored dispute resolution mechanisms, which tend to be less than satisfactory in any case. They will need to proceed to civil litigation as soon as possible to avoid risk of exceeding the two year limit.

This is not only unfair to the victims but is disruptive to the current regulatory system and suggests that the federal government must take quick action to establish a national regulator.

We believe this issue is of paramount importance not only for consumer/investors but for all Ontarians.

We ask for your support in bringing this matter to the attention of the house and revising your private members bill to include all victims of white collar crime and other forms of abuse.

As soon as we receive a response from the Attorney General's office we will advise you.

We have had discussions with the OSC but have not received any comfort even though they say the Securities Act is carved out from the Limitations Act.

Ed provided you with a copy of an article by James Daw in the Toronto Star on May 19th. Jim has investigated this matter and was told by the IDA, who say investor protection is important to them and indeed that responsibility has been *abdicated* to them by the OSC, that they were not consulted about the changes in the Limitations Act. An electronic copy is appended for ease of distribution.

It seems that no one is looking after investor protection and that is why we have requested the federal government to conduct an inquiry and establish a national Investor Protection Agency. Canadian consumer/investors need someone who will stand up for them.

We hope that you will support this initiative.

If we can be of any assistance please contact us.

We also hope that you or someone delegated by you can attend the OSC Investor Town Hall Meeting on May 31st to hear first hand some of the consumer/investor concerns. An invitation is appended. Please inform you staff.

Sincerely

Stan I. Buell, P.Eng.
Small Investor Protection Association (SIPA Inc)
P.O.Box 325, Markham, ON, L3P 3J8
e-mail: stanbuell@sipa.to - website: www.sipa.to - tel: 905-471-2911

Visit SIPA's website for information on the OSC Town Hall Meeting May 31st.
FREE admission. Registration required.
Registration Link provided at www.sipa.to

Small Investor Protection Association

LETTER TO MPP FRANK KLEES – MAY 20, 2006

May 20, 2005

M.P.P. Frank Klees
210 - 650 Highway 7 E
Richmond Hill ON L4B 1B2

Sir:

Thank you for meeting with Mr. Edward DeToro and me. Mr. DeToro is a member of our association and represents the thousands of small investors who are being victimized by widespread wrongdoing in the investment industry and the failure of our regulatory system to provide adequate investor protection.

Securities regulation is a provincial jurisdiction, but we have appealed to the federal government to provide consumer/investor protection because the industry and the regulatory system have failed to provide investor protection. The mutual fund market timing scandal exposed in December 2004 illustrates the cavalier attitude of industry towards small investors savings and how widespread wrongdoing is.

On January 2004 the Ontario Limitations Act was passed. This Act reduces the six-year limitation period to two years. This reduction in limitation period is prejudicial to small investors. Canadians who suffer loss of their life savings take more than two years to cope with the situation, and another couple of years to find their way through the quagmire of regulatory agencies.

We are asking for your support to raise this Limitation Period issue in the House for discussion and to have this onerous provision of the Act to exempt actions related to investment issues,

Yours very truly

Stan I. Buell, P.Eng.
President

Cc Hon. Michael J. Bryant - attorneygeneral@jus.gov.on.ca
Hon. Gerry Phillips - gphillips.mpp@liberal.ola.org
Hon. Greg Sorbara, – gsorbara.mpp@liberal.ola.org

EXCHANGE OF E-MAILS (MAY 2005) WITH THE OSC RE LIMITATION PERIOD – 20 MAY 2005

Mr. Frank Klees, M.P.P.

For your information I had approached the OSC, Mr. Brown and Mr. McFarlane, looking for some clarification regarding the limitation periods. They in turn had a lawyer respond but this was not a satisfactory response.

A subsequent conference call did not provide any comfort but confirmed that investors now face a new risk of being deprived of the right to take action by the shortened limitation period.

As you will see I have copied this to Ontario's regulators but no one else.

You may find this helpful in understanding the situation.

Regards

Stan Buell

----- Original Message -----
From: rdilieto@osc.gov.on.ca
To: Stan Buell
Cc: DBrown@osc.gov.on.ca ; cmacfarlane@osc.gov.on.ca ; Supt. Craig S. Hannaford, OIC IMET ; Joe Oliver, President ; Larry Waite, MFDA ; Tom Atkinson, MRS
Sent: Thursday, May 12, 2005 11:30 AM
Subject: Re: Limitation Periods

Dear Mr. Buell,

Thank you for your email of May 5th, 2005.

I will attempt to address the questions you have raised. However, I would caution that this response is not intended to be legal advice and should not be posted on your website as you have proposed. Any potential claimant should seek independent legal advice with respect to their claim, including advice about the applicable limitation period. Members of the public can also access the *Limitations Act, 2002* ("LA"), and all Ontario legislation, on the government of Ontario's website (www.e-laws.gov.on.ca).

Your question relates to two different types of civil actions: (1) statutory causes of action that are established by *Securities Act,* and (2) non-statutory (common law) causes of action. I will attempt to provide a general overview of how the new legislation impacts each of these.

The new LA does not impact the limitation periods for the statutory causes of action provided for in the *Securities Act* because they have been carved out of the LA. If you look at the Schedule to the LA, you will see a list of statutory provisions that remain in force. All of the limitation periods under the Securities Act are contained in this schedule and therefore remain in force. This means that the limitations periods for statutory liability for misrepresentation in certain disclosure

documents, such as a prospectus, offering memorandum, or circular remain unchanged. The limitation period for each of these statutory causes of action is generally *the earlier of* 180 days after the plaintiff first knew of the misrepresentation or three years after the transaction in question. This limitation period has been in effect since 1980 and to my knowledge has not been the subject of concern.

By contrast, non-statutory (common law) causes of action, such as actions for negligent or fraudulent misrepresentation, breach of contract, or breach of fiduciary duty are all governed by the new limitation period (subject to some transitional provisions). The basic limitation period for these causes of action is two years from the date the claim is discovered or ought reasonably to have been discovered. There is an ultimate limitation period of 15 years from the date of the act or omission at issue.

The LA represents a significant departure from the previous Limitations Act in Ontario. The previous legislation imposed limitation periods for specific causes of action (six years for claims for breach of contract or negligence). Where a specific cause of action was not mentioned in the previous statute, for instance, breach of fiduciary duty, no limitation period applied.

Two years may seem like a very narrow window in which a plaintiff can bring a cause of action. However, there are numerous factors or events set out in the new legislation that have the effect of pausing the limitation period. Many of these pausing events or factors appear to address the concerns you have expressed about potential erosion of rights.

For instance, the limitation period does not run if the plaintiff is not aware of the claim (and this lack of knowledge is not unreasonable), if the plaintiff is incapable of bringing the claim due to physical or mental illness, or during a period where the plaintiff and defendant have agreed to try to resolve their claim through an independent third party. The plaintiff must prove to the court that he or she fits within these exceptions. As you are aware from our previous correspondence, despite these exceptions, the maximum limitation period is fifteen year.

There are, however, exceptions to this ultimate fifteen year limitation. One exception that may be of interest, is that the fifteen year limitation period does not apply where the plaintiff can establish that the person against whom the claim is made has wilfully concealed the claim or wilfully misled the person with the claim as to the appropriateness of proceeding.

I hope this information is useful to you. I have tried to explain the legislation in very general terms. I do urge you to look at the LA, as it is quite a detailed piece of legislation. Again, I would like to stress that this response is not intended to be legal advice, but a general overview, exploring some of the concerns you have raised.

If you continue to have questions or concerns about the LA, I would suggest that you contact the Ministry of the Attorney General as the Attorney General has responsibility for administering the LA. If you have any further questions or concerns about *Securities Act*limitation periods, however, I would be pleased to meet with you to discuss further.

Sincerely,

Small Investor Protection Association

Rossana Di Lieto
Acting General Counsel
Ontario Securities Commission
Tel: (416) 593-8106
Fax: (416) 593-3681
rdilieto@osc.gov.on.ca

05/05/2005 09:03 AM

To: <rdilieto@osc.gov.on.ca>

cc. "David A. Brown, Q.C." <DBrown@osc.gov.on.ca>, "Supt. Craig S. Hannaford, OIC IMET" <craig.hannaford@rcmp-grc.gc.ca>, "Tom Atkinson, MRS" <tom.atkinson@regulationservices.com>, "Larry Waite, MFDA" <LWaite@mfda.ca>, "Joe Oliver, President" <joliver@ida.ca>

Subject: Limitation Periods

Rossana Di Lieto
Acting General Counsel
Ontario Securities Commission

Dear Ms. Di Lieto,

Thank you for your response. We do still have concerns regarding the nature and scope of the carve out under the LA for *Securities Act* limitation periods.

I am not a lawyer, but SIPA represents a membership (and small investors across Canada) that has varying degrees of education. We are looking for a plain language explanation of the Limitation periods that apply to complaints by aggrieved investors.

SIPA is asking the OSC for such an explanation because you are responsible for the administration of the Ontario Securities Act and the OSC understands the need for plain language communication for investors.

At this time we are not asking about limitation periods for regulators to take action, although that issue will surely follow.

We are particularly concerned with your statement:

"Similarly, the *Securities Act* contains a unique limitation period for civil actions for damages initiated by investors for misrepresentations in disclosure documents like prospectuses. Generally, the limitation period for such civil actions is the earlier of 3 years after the date of the transaction and 180 days after the plaintiff first had knowledge of the facts."

Does your response mean aggrieved investors have a maximum of three years after the date of the

transactions in question to initiate an action for misrepresentation?

What limitation period would apply for:

The IDA's most common reported complaints

- **Unsuitable investments**
- **Unauthorized trading**
- **Inappropriate personal financial dealings**
- **The CSA's top five complaints**
- **Suitability**
- **Customer Service**
- **Unauthorized trading**
- **Disclosure**
- **Scams and Frauds**

We also believe that most actions by the investment industry are fiduciary in nature and therefore more extended limitation periods should apply. However, we are very much aware of industry's efforts to deny fiduciary responsibility and would ask for some plain language clarification on this issue at later date.

A timely response that we can post on our website will be appreciated.

Stan I. Buell, P.Eng.
Small Investor Protection Association (SIPA Inc)
P.O.Box 325
Markham, ON, L3P 3J8
e-mail: stanbuell@sipa.to
website: www.sipa.to
tel: 905-471-2911

----- Original Message -----
From: rdilieto@osc.gov.on.ca
To: stanbuell@rogers.com
Cc: dbrown@osc.gov.on.ca ; cmacfarlane@osc.gov.on.ca
Sent: Wednesday, May 04, 2005 6:34 PM
Subject: Limitation Periods

Dear Mr. Buell,

I am writing in response to your e-mail letters to David Brown and Charlie Macfarlane regarding recent Ontario reforms to limitation periods and the impact of such reforms on investment issues.

In January 2004, the *Limitations Act, 2002* (the "LA") came into force in Ontario. The LA sets the time limits within which a civil action must be commenced in Ontario. Your e-mail correctly notes that the basic limitation period under the LA is two years from the day that a claim is discovered. The LA also provides for an ultimate limitation period of fifteen years.

It should be noted, however, that the LA also contains a schedule which lists a number of special limitation periods contained in other statutes which remain in force. All the limitation periods provided for under the *Securities Act* are contained in this schedule. By way of example, section 129.1 of the *Securities Act* provides a general six year limitation period for judicial or administrative proceedings commenced under the *Securities Act*. This limitation period applies to administrative proceedings brought before the Commission under s.127(1) of the *Securities Act*, which empowers the Commission to make certain orders in the public interest. It applies to judicial proceedings brought in provincial court under section 122(1) of the *Securities Act*, which sets out various offences under the *Securities Act*. It also applies to civil enforcement proceedings under section 128 of the *Securities Act*, which allows the Commission to apply to the Ontario Court (General Division) for a declaration that someone has not complied with Ontario securities law and to seek a number of remedial orders based on that declaration. This six year limitation period set out in the *Securities Act* continues to apply notwithstanding the LA. Similarly, the *Securities Act* contains a unique limitation period for civil actions for damages initiated by investors for misrepresentations in disclosure documents like prospectuses. Generally, the limitation period for such civil actions is the earlier of 3 years after the date of the transaction and 180 days after the plaintiff first had knowledge of the facts. This unique limitation periods continues to exist. It should be emphasized, however, that to the extent an investor commences an action outside of the *Securities Act* the limitation periods provided for under the LA would apply.

If you have any questions or concerns regarding the nature and scope of the carve out under the LA for *Securities Act* limitation periods, please do not hesitate to call or e-mail me.

Sincerely,

Rossana Di Lieto
Acting General Counsel
Ontario Securities Commission
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rdilieto@osc.gov.on.ca

STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE – JUNE 16, 2006
EXCERPTS FROM PROCEEDINGS

Proceedings of the Standing Senate Committee on Banking, Trade and Commerce

Issue 14 - Evidence - Meeting of June 16, 2005

OTTAWA, Thursday, June 16, 2005
The Standing Senate Committee on Banking, Trade and Commerce met this day at 11:00 a.m. to examine and report on consumer issues arising in the financial services sector.
Senator Jerahmiel S. Grafstein (*Chairman*) in the chair.
[*English*]
The Chairman: Welcome. Our first witness today is Mr. David Brown, Chair of the Ontario Securities Commission. Today's meeting is being televised live across the country as well as being webcast.
The examination of consumer issues has been a revelation for many committee members who thought that the problems were well in hand in many areas. Hence, we are delighted to receive the benefit of the advice of Mr. Brown. One concern is the inefficiency of the Canadian securities system, its cost and complexity, not because of the Ontario Securities Commission, but because of a national structure that does not allow us to meld the provincial securities commissions into a single unit. This issue has been ongoing for the better part of 40 years, and we are no closer to a solution, with the exception of harmonization. There is greater cooperation between the various securities commissions under the leadership of Mr. Brown, who is to be commended, given the difficult tasks.
Mr. Brown, I would ask you to speak briefly to allow committee members ample time for cross-examination. As well, could you advise the committee on the best recommendations to improve consumer protection within your area of expertise? Mr. Brown, we understand that you are leaving your position. We commend you for an outstanding job under difficult circumstances.
Accompanying Mr. Brown is Ms. Wendy Dey, Director of Communications, Ontario Securities Commission. Mr. Brown, please proceed.
Mr. David Brown, Chair, Ontario Securities Commission: Honourable senators, thank you for allowing me to appear today to discuss the Ontario Securities Commission Investor Town Hall, which we held on May 21 in Toronto. Mr. Stan Buell, President of the Small Investor Protection Association, mentioned it in his testimony to you. Mr. Buell participated with me on the town hall panel, with Mr. Michael Lauber, from the Ombudsman for Banking Services and Investments; Mr. Joe Oliver, from the Investment Dealers Association; and Mr. Larry Waite, from the Mutual Fund Dealers Association of Canada.
More than 400 people attended our first town hall meeting, most of them from the Greater Toronto Area. Others came from across Southern Ontario, including London, Huntsville and Gloucester. Another 35 listened to our live webcast. Each panellist made brief remarks. However, most of the event was an interactive question-and-answer session with the audience.
I believe that Senator Moore asked Mr. Buell if we would prepare a report on the town hall meeting. I can assure senators that we will do so at the end of June. I gave that assurance to those who attended the meeting. I will ensure that committee members receive copies of that report.
The need to give retail investors an opportunity to voice their criticisms of and concerns with the regulatory process became apparent last summer during hearings of the Ontario Ministry of Finance

Standing Committee on Finance and Economic Affairs, SCFEA. The town hall meeting underscored the fact that too often the system that is supposed to address the grievances of investors has been a source of frustration instead. Many investors do not know where to turn. Among many who have the knowledge there is a lack of trust. That being said, we want to improve our understanding of the challenges facing retail investors.

While securities regulators have made it a priority to pursue investor protection issues, such as corporate governance, it is increasingly apparent that there is a need to place more emphasis on providing protection to the investor as a consumer of financial services. We must ensure that the system can respond to investors who have legitimate grievances. We must ensure that investors are able to access the system easily. First, we must identify the issues that are important to investors.

The town hall meeting was a start toward achieving those goals. We will be building on that, working closely with investors and other participants in the regulatory system. We can do that in three ways: First, we can provide more opportunities for investors to raise issues and to participate in addressing them. Second, we can convey to provincial governments the concerns we hear and advise them on possible legal and policy changes that we may deem justified. Third, we can introduce changes to the system that will help investors take advantage of the available options. Investors voice numerous concerns, which we will research to better understand the scope of the issues.

For now, I will summarize some of the things we heard and some of the things we are doing about them. We heard that it is necessary to make the system easier to figure out. Indeed, the OSC's Call Centre frequently refers callers to other agencies for assistance because their inquiries fall outside the jurisdiction of the OSC. We must ensure that aggrieved consumers know how to access the regulatory system, what the process will entail, and how to pursue their specific issue more effectively.

Investors come to the regulatory system when they have serious problems, but that system is fragmented and complex. Regulatory responsibility can rest with the IDA, the MFDA or securities regulators, depending on each set of circumstances.

We have to find ways to facilitate the investor's passage through this system. We heard a strong desire for restitution mechanisms for consumers who suffer a loss because of wrongful actions of market participants. The Ontario Ministry of Finance Standing Committee on Economic and Financial Affairs, SCEFA, highlighted the prohibitive expenses faced by aggrieved investors seeking restitution. It recommended that the government work with the OSC to establish a workable mechanism that would allow investors to pursue restitution in a timely and affordable manner. We are examining several ways of pursuing that goal. We heard that investors with a grievance need time to pursue all of their avenues, including the courts. One frustration that retail investors have raised is the limitation on investor suits. Under the Ontario Limitations Act 2002, a uniform two-year limitation period applies to all actions except those that are specifically carved out, such as actions by the OSC.

Unfortunately, this two-year limitation period leaves plaintiffs with a narrow window for bringing an action. Although a number of considerations pause the clock, we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have elapsed. For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these reasons, we suggested to the Ontario government that it would be well advised to take another look at this two-year cut-off. The town hall meeting confirmed that investors have both

complaints and ideas on to deal with them. It would make sense to take advantage of their expertise. Currently, the OSC has several advisory bodies and will begin immediately to establish an investor panel to provide advice and commentary on an ongoing basis.
One of the most important results of the town hall meeting was the validation of dialogue. Investors have a right to relate their experiences and views to the organizations responsible for protecting their rights and to hold us accountable in public forums. Regulators need to hear their stories, and in their own words. This was not the last OSC Investor Town Hall and it will become a regular event to provide an opportunity for constructive dialogues between consumers and regulators. I look forward to your questions, thank you.
The Chairman: Thank you, Mr. Brown.
...

[Exchange with Senator Plamondon)
[Translation]
Senator Plamondon: I would like to discuss your mandate to protect consumers.
I am not a lawyer; before becoming a senator, I was a consumer advocate. Having sat on the Bureau des services financiers du Québec and other bodies, I know that everything depends on client-broker confidence. That depends on all of the know-your-client rules. Once these rules have been appropriately followed, the investor authorizes his broker to invest. Transactions follow and then there is the disappointment, as you heard during the town hall meetings. Do town hall meetings need to be held throughout the year so that you become aware of the disappointments experienced by the investors?
It takes a while before a consumer knows where to turn. You yourself said in your presentation that this system is fragmented and complex.
According to Mr. Lauber as well as other ombudsmen who appeared before us, the individual experiencing a problem begins by filing a complaint within the sector; this is then forwarded to the ombudsman, in this case, Mr. Lauber. However, time marches on and the two-year cut-off period has almost expired. Let us suppose this happened at your outfit. Does the financial services ombudsman, Mr. Lauber, send you many complaints of fraud? Do they have the authority to determine that there has been fraud and to forward it to you?
Once a complaint has been filed, either with the office of the ombudsman or with you, would you agree that the cut- off date should be suspended? At that point, the consumer could, in all confidence, wait for the inquiry to take place. That is the first thing. That is what is most important.
Do you also ascertain whether or not the know-your-client rule has been followed? If that were so, we would not have all of these problems and the authorizations would be clarified. Right now, consent given by the consumer is based on trust but not clarified. Consumers do not know what they are committing to and they do not understand the risk. They give all kinds of authorizations to a broker who is in a hurry to make the transaction.
[English]
Mr. Brown: Let me start with those questions in the reverse order.
The third question had to do with the know-your-client rule. Another way of expressing it is the suitability rule. It is clear across the country that brokers and advisers have a positive obligation to determine that investments they are recommending to their clients or buying or selling for their clients are appropriate for those clients. This means they need to know not only the nature of the investment, but the client's circumstances and objectives.

Probably 50 per cent of the cases that we deal with involving small investor issues have to do with performance under the know-your-client or suitability rule. It is an issue that we and the SROs take very seriously. Those rules need to be reviewed and there will likely be some changes that we must make. We have been working with the industry and our regulatory colleagues across the country on a proposal called the fair dealing model. The principles of it are that the dealers need to clarify the relationship with their clients so these issues are also clarified much better at the time an account is opened. We agree that there needs to be work done there.

In the meantime, we are ensuring that the SROs who review their members' conduct on a periodic basis focus on that to ensure that that obligation is being complied with.

Second, consumers' confusion in trying to seek redress is a very valid part of it. It is one of the reasons why we had the town hall meeting and ensured that we had Michael Lauber, the ombudsman, the chairs of the MFDA, the IDA and me on the stage. Depending on the circumstances, one or the other of us would have primary responsibility.

When listening to the investors, we realized this was a confusing array. The very fact that there are 500 people in the audience and four people on the stage is enough to cause confusion.

We heard that people either did not know where to look in the system, or knew but did not trust it. People had been told by friends or colleagues not to waste their time because they would not get their money back. We have two issues to deal with and we have to simplify the system so that people will know where to begin to look for answers.

Mr. Michael Lauber, Ombudsman for Banking Services and Investments, thinks that people should start with his office, but there are constraints as to far he can take something because he cannot offer advice or be an advocate. We need to figure out whether to have someone play the role of advocate and adviser to direct people appropriately through the system.

Senator Plamondon: Someone who could help.

Mr. Brown: The OSC is aware of that and is looking at models in other jurisdictions. One model in Australia looks quite interesting, in that a group superimposed between the broker and a client when a dispute occurs helps the client work his or her way through the system at the broker's expense.

On your third question, as I mentioned, we heard comments at the town hall about the two-year time limit. We had not heard about it until a couple of weeks before the meeting. That is one reason for the need to hold town hall meetings regularly so that these issues can surface.

The two-year time limit in Ontario pauses if during that period the investor seeks arbitration or goes to court. It is not 100 per cent clear whether it pauses if the investor goes to the ombudsman, on which the ombudsman is seeking legal advice.

The time limit does not pause if the investor comes to us.

Senator Plamondon: It does not?

Mr. Brown: No. Again, these issues need to be addressed.

The Chairman: To be fair, Mr. Brown, you raised that issue and it is a matter of provincial jurisdiction and not for us.

Mr. Brown: It is a matter of provincial jurisdiction. I should say that all but three provinces have moved to a two- year time limit. Although this is surfacing in Ontario, we understand that the issue is being raised across the country, with the exception of three provinces.

Senator Plamondon: Even though it is a matter for the provinces, it is important for the consumer to be aware of it. Investors want to know how much time remains to seek redress or take other necessary action.

Where in the mandate of the OSC does it state a requirement to protect the investor?

Mr. Brown: The OSC has a dual mandate: to provide protection to investors and to foster confidence in the Canadian capital markets. In respect of the investor protection mandate, as I said at the town hall, we have spent most of our time looking at the transparency of corporations, corporate governance, the audit function, et cetera. Perhaps we have not spent sufficient time looking at the relationship between the investor and the financial intermediaries because that is the area eliciting the greatest number of complaints.
Senator Plamondon: Would you agree that any fines levied against brokers should be put into a kind of trust fund for more frequent town hall meetings to better serve more people?
Mr. Brown: We are happy to finance the town halls from our general budget because they are not large expenses for the OSC.
The money that we receive from settlements and fines goes into the OSC's investor education fund. It is one of the most, if not the most, sophisticated investor education portals available. The OSC will continue to fund that because a big part of our investor protection mandate is to try to help educate investors.
...

[Exchange with Chairman]
The Chairman: Mr. Brown, Senator Tkachuk raises a real issue here. It seems to us and to him that there are insufficient checks and balances within the system. Our question to you is are there appropriate checks and balances being put into the system to make sure that the desire for revenue is balanced by protection of the consumer and the legitimacy of or belief in the system as a whole? It is a fundamental question. Frankly, I think his concerns are shared by all members of this committee and the public. Are the checks and balances being put into place speedily enough? We sense there is a lag here.
Mr. Brown: I think you focused on the most important issue that was exposed most graphically with Enron, WorldCom and some of the failures we had here. The checks and balances that we had all thought were there to protect investors did not work. One by one, they failed. We have systematically tried to identify those and put in place enhancements to those checks and balances that I believe are now working. Most of those are now in place. As I mentioned, we have new rules for auditors and audit committees. Audit committees must now be independent. The auditors must be independent. The auditors must report to the audit committees, not to the CEO and CFO. The CEO must personally certify that the financial statements are correct and are a fair representation.
The Chairman: Mr. Brown, those are all related to the corporations. We are talking about the checks and balances within the securities system on advisers to investors. Are the checks and balances within the securities system itself adequate? For instance, there is the conflict of a researcher in a corporation where he is, in effect, advising on a stock that his company is selling. Are there checks and balances within the system, not just with respect to Sarbanes-Oxley? That is our focus at this moment.
Mr. Brown: We have indeed put in an entire new set of rules with respect to research analysts, their independence and their relationships with the dealers, to not only try to eliminate some of the conflicts of interest but to ensure that all such conflicts are identified, and to the investor. Yes, the first answer is a new set of rules that deals with research analysts has now been in place for over two years. We have also coordinated that with the United States to ensure that ours are as robust as theirs.

...

[Exchange with Senator Moore]
Senator Moore: I was interested in the comments of Senator Plamondon with regard to the two-year limitation period. If that window was increased to three, four or five years — and I note you said that you suggested to the Ontario government that they would be well advised to take another look at it — do you think you would have more cases? What percentage increase would there be, if any, if people knew that they had a longer time to process their complaints?
Mr. Brown: There is a bit of a dichotomy. Investors are saying they do not trust the system and would not use it anyway, yet they are asking for more time. I think there would indeed be more cases. I think there are cases where investors have realized too late that the limitation period has worked against them. Indeed, we would see more cases if the period were extended. It used to be a uniform six years across the country. It is now becoming a uniform two years. The question is whether it should go back to six years.
Senator Moore: If there is a longer period, would that not help you and your staff in terms of the quality of their investigation?
The Chairman: Our investigation is not limited. Our investigation can still last six years. It is only private rights of action between investors that are limited.
...

[Chairman's closing remarks]
The Chairman: Mr. Brown, I have a final question. We have come to grips with the question of the slowness in creating one securities commission. There is a general view around this table. The federal government has been on this case now — I myself have been involved — for over 40 years, and we are not much closer to having one central authority.
Our other option, where the progress is slow but sure and hopefully inevitable, is to accelerate the creation of a central prosecution mechanism, because we can clearly do that under the Criminal Code. We are about to hear from IMET about that.
What is your view of a central, federal prosecution mechanism, armed with information from the various securities commissions and exchanges such as yours, and supported by these task forces so that there can be a greater focus?
Mr. Brown: I am not sure I understand how you would see things differently. The RCMP is a federal law enforcement agency. I would have thought that that at least fits part of your definition of a central authority.
The Chairman: It does.
Mr. Brown: Are you talking about having the federal Attorney General take over responsibility from the provincial Attorneys General for the actual prosecutions?
The Chairman: I am talking about a more centralized prosecution mechanism. I am not suggesting it should be the Attorney General of Canada, but it should be a central mechanism by which the federal government coordinates with provinces, because we do have federal and provincial prosecutors dealing with the same laws. The province can exercise its right to prosecute a breach of the Criminal Code, as can federal prosecutors. In some instances, they share responsibility. The issue is to bring all the expertise together in one place so that, as you say, it is cost-effective.
Mr. Brown: I can answer your question by telling you about our experience as securities regulators. A few years ago, our enforcement people across the country rarely got together. When they did, it was through a telephone call lasting several hours. Our enforcement people now meet very frequently. They get together for two days and invariably run out of time because of the number of issues we are now coordinating across the country. It is one of the reasons the drive for

a national commission is so important. We are finding a greater need to coordinate across the country.

If that analogy helps you in your own thinking, I believe that could help.

The Chairman: I think you have gone as far as you can. Thank you for that.

Mr. Brown, we want to commend you for your efforts in Ontario. We understand the complexity of the problems and the need for harmonization. This committee is studying productivity, and we think the failure to create one securities commission inhibits productivity in this country. We urge you to continue your battle, notwithstanding the fact that you are leaving your official responsibilities. You have been a voice of sanity and leadership in this battle to bring the political will to bear on solving some of these systemic problems. We wish you well in your future career.

Thank you, Ms. Dey, for coming as well. You have been silent but articulate.

Small Investor Protection Association

ADVISOR.CA ARTICLE BY DOUG WATT – JUNE 17, 2005

From Advisor.ca

OSC chair asks for review of civil action timelines

Doug Watt

(June 17, 2005) Ontario Securities Commission chair David Brown says he will ask the provincial government to take another look at the current two-year limitation period currently in place for investor lawsuits.

The limitation period was recently quietly reduced to two years from six in a number of provinces, including Ontario, Alberta and Saskatchewan.

"We heard that investors with a grievance need time to pursue all of their avenues — including the courts," Brown said Thursday before the Senate Committee on Banking, Trade and Commerce in Ottawa. "One frustration that retail investors have raised is the limitation period on investor suits. Under Ontario's new *Limitations Act*, a uniform two-year limitation period applies to all actions except those that are specifically carved out, such as OSC actions."

"Unfortunately, this leaves plaintiffs with a narrow window for bringing an action," Brown added. "Although a number of considerations pause the clock, we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have lapsed. And for a life-altering event — like losing a chunk of your life savings — it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or advisor can consume valuable time. And investors who pursue arbitration must relinquish the option of court action."

"For these reasons, we are suggesting to the Ontari government that it would be well-advised to take another look at the two-year cut-off," he said.

The two-year limit was also raised at the recent OSC investor town hall in Toronto by Stan Buell, head of the Small Investor Protection Association.

"The OSC event confirmed that investor protection is lacking, and that there are no satisfactory means of resolving disputes except civil litigation," Buell says. "Now, that last bastion of help for investors is being threatened."

"Investors are warned that reduction of the limitation period for taking civil action could have serious consequences if you have a complaint," he adds. "SIPA recommends that aggrieved investors should speak immediately with a qualified securities litigation lawyer to determine how limitation periods could affect you, and determine an appropriate course of action prior to initiating any other complaint procedures."

Buell says SIPA is seeking clarification on the limitation issue with governments and regulators across the country and will be issuing a report on the subject later this month.

For his part, Brown conceded before the Senate committee that the country's regulatory system — intended to address the grievances of investors — has been a source of frustration instead. "Many investors don't know where to turn," he noted. "Among many who have that knowledge, there's a lack of trust. That being said, we want to improve our understanding of the challenges facing retail investors."

"One of the most important results of the town hall was the validation of dialogue," he added. "Investors have a right to relate their experiences and views to the organizations responsible for protecting their rights, and to hold us accountable in a public forum. Regulators need to hear their stories, in their own words."

To that end, Brown said the OSC will immediately start working to establish an investor panel to provide advice and commentary on an ongoing basis, based on feedback from the town hall.
Filed by Doug Watt, Advisor.ca, doug.watt@advisor.rogers.com
(06/17/05)

NATIONAL POST ARTICLE BY PAUL VIERA – JUNE 17, 2005

MORE TIME NEEDED TO RECOUP LOSSES

'TAKE ANOTHER LOOK'

Two-year limit on filing suits should be reviewed, OSC's Brown tells Senate committee

BY PAUL VIEIRA
Financial Post, with files from Bloomberg News

Friday, June 17, 2005

OTTAWA • The departing head of the Ontario Securities Commission indicated yesterday aggrieved investors should be given more time to pursue lawsuits against Bay Street players to recover lost money.

This was part of the testimony from David Brown before the Senate banking committee, which also pressed him on the OSC's perceived lax enforcement record and its failure to dish out penalties related to the Bre-X scandal.

In seven provinces, including Ontario, investors who claim to have been wronged have a two-year limit to file lawsuits through the court system. But Mr. Brown told the senators this limit may need to be reviewed and changed.

"We have learned that aggrieved investors do not always discover the full consequences of a problem until two years have lapsed," said Mr. Brown, whose term expires at the end of this month. "And for a life-altering event — like losing a chunk of your life savings — it takes time to come to terms with the problem.

"Attempting to obtain voluntary redress from a dealer or advisor can consume valuable time. For these reasons, we are suggesting that ... it would be well advised to take another look at the two-year cutoff."

Mr. Brown said that according to the law in Ontario, the two-year time limit "pauses" when the investor seeks arbitration or files court action. However, the two-year countdown continues if the investor approaches the OSC.

The idea to potentially extend the two-year limit emanated from an OSC-organized town hall event in which retail investors had a chance to voice concerns.

Investors told OSC officials they don't know where to go if they have a complaint, Mr. Brown testified. Moreover, investors said they didn't trust the complex regulatory regime — in which responsibility can rest with either self-regulatory bodies or the OSC — to help them recoup money lost through fraudulent investments.

Some senators applauded the measure Mr. Brown was pursuing. However, he also came under fire from a few committee members.

"The perception is that enforcement is lax, if not at a lower level than in the United States," said Michael Meighen, a Conservative Senator from Ontario. "The perception is people get slapped on the wrist and no more."

Mr. Brown said Eliot Spitzer, the crusading New York State Attorney General, is often cited as the role model for fighting corporate crime. But he described this as an "unfortunate comparison" because Mr. Spitzer is a law-enforcement officer, "whereas we [OSC] are a securities regulator."

Meanwhile, David Tkachuk, a Conservative Senator from Saskatchewan, asked why no one from Bay Street's investment banking and research community has been penalized over the fraud at Bre-X Resources Ltd., the Calgary company that falsely claimed to have found gold in Indonesia.

"How did all these research houses miss what was going on at Bre-X?," Mr. Tkachuk asked. "Who there went to jail? What broker got charged? ... It was the investment industry that failed the system."

Mr. Brown defended the regulator, noting the OSC is the only regulatory body with a case still before the courts against Bre-X. He added the OSC has introduced new measures aimed at improving disclosure in brokerage houses.

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Small Investor Protection Association

LETTER STANDING SENATE COMMITTEE ON BANKING. TRADE AND COMMERCE – JUNE 27, 2005

June 27, 2005 by e-mail

Standing Senate Committee on Banking, Trade and Commerce
Senate of Canada
40 Elgin Street - Room 1039
Chambers Building
Ottawa ON K1A 0A4

Mr. Gerard Lafreniere,

Since our appearance before the Senate Committee on Banking Trade and Commerce on April 14th, we became aware that the Ontario Limitations Act has surreptitiously reduced the six-year limitation period to two years. We believe this is a serious issue for Ontario investors and may be an important issue for all Canadians.

We do not yet know who introduced or lobbied for this revision but we are sure it could not be anyone or any group with any concern for consumer or investor protection.

I do know that Joe Oliver, President and CEO of the Investment Dealers Association, assured the Senate Committee that all is well. He assured you that the IDA provides investor protection, and that the IDA arbitration program and the OBSI dispute resolution process provides satisfactory restitution for investors who have been victimized by the financial services industry. I do not agree.

Financial abuse is widespread and covered up. The complaints handling process is faulty and victims of financial services industry wrongdoing are victimized again by the industry's complaints handling processes.

It seems the small investor has been abandoned.

If the information contained in the appended exchange of e-mails between Mike Lauber, Ombudsman Banking Services and Investments, and Ken Kivenko, Chair SIPA Advisory Committee, is in fact accurate, we consider this a matter that must be dealt with on an urgent basis. Other provinces, as well as Ontario, may also have abbreviated limitation periods. In fact CARP and SIPA have recommended extending the limitation period for issues of financial abuse.

This limitation periods issue underlines the need for a national authority responsible for investor protection as recommended in the CARP/SIPA Report of September 2004.

Presumably, those who are responsible for consumer protection must know that life-altering experiences, including the loss of one's entire life savings when one is trusting that our investment industry and regulatory system can be trusted to safeguard one's savings, have a severe impact on individuals.

Corporate bodies have no heart, soul or emotion and may deal with issues through lawyers in a different manner. However, individuals suffer in many ways from life-altering events and most are ill equipped to deal with the impact of such issues.

So severe is this impact that some victims have chosen suicide, rather than to continue life in this wonderful country of ours, after their trust has been betrayed by the financial services industry, and their hopes and dreams destroyed.

Who is looking after the consumer/investors?

Many of the victims (when they are finally able to deal with this type of issue) routinely take more than two years to find their way and learn how the regulatory system works.

With a two-year limitation period it is obvious that many victims will be time barred from the courts from seeking restitution even when some of the industry's practices may be criminal in nature. Is this justice?

This is exactly why SIPA is calling for a national inquiry into investment industry practices and the regulatory system in our submission to the Standing Committee on February 14th, 2005.

This abuse of widows, seniors and other small investors has continued for far too long. It has been covered up by the financial services industry by failing to disclose information, and using gag orders when victims succumb to offers of partial settlement. The public remains unaware of the number of human tragedies that are being created each and every year.

A senior lady at the OSC Town Hall Meeting last Tuesday stated that they had lost $170,000 of their life savings in two years when they placed their trust in one of Canada's bank owned brokerages. They agreed to a settlement of $30,000 and signed a gag order. This prevents the public from learning which bank is robbing seniors and widows, and enables the industry to continue their perverse practices of robbing those who place their trust in them.

This should not be considered an isolated case. Investors are losing in excess of $1 billion each year due to industry wrongdoing. The stories are countless. Yet no action is being taken because the industry has successfully covered up and successfully lobbied our governments. Provincial governments have failed to protect investors.

We do not need more studies or more reports. We need our federal government to take action. We need legislation that empowers an authority to protect consumer/investors. We need mandatory sentencing for white-collar criminals that confiscates all of their material wealth until such time as every single victim is made whole. These perpetrators must be made to feel the sense of hopelessness and despair that they create in their victims.

I have trouble believing that our leaders can stand idly by and allow this to happen. I must believe that they allow it to happen because they are not aware of how many of our seniors are suffering. How else could I continue to believe in Canada?

Is David Brown the only individual who read the SIPA Report?

David Brown has taken action by calling the OSC Investor Town Hall Meeting. I admire and respect him for this action. I sincerely hope that others will follow suit and that his actions will precipitate government action to address this hidden issue that has devastated so many Canadians.

It seems that only those individuals who have had personal experience have any understanding of the issues.

Let us be clear. Every individual trusts their advisor until they find out they have been robbed. Studies and surveys will show that 98% of the people trust their banks and advisors. Those that do not have already been robbed and gagged from speaking out.

All of Patrick Kinlin's clients trusted him. Some refused to believe that he was sent to jail for fraud. All of them lost their money.

All of Michael Holoday's clients trusted him. He worked for Midland Walwyn and First Marathon. The clients lost their money. I met one of his victims at the OSC Investor Town Hall meeting on Tuesday night. She is a lovely senior lady. She says that she is luckier than most because she is still able to work to support herself. She lost her dream of a comfortable retirement. Is this just?

Is it just that our society allows these financial predators to achieve freedom in a year or so while their victims are condemned to a life of deprivation at best and deep despair and suicide at worst?

The reaction of the crowd of 500 in the CBC Atrium emphasizes the need for positive action from our government. The audiocast will be available on the OSC website for 180 days. The Senate Committee or at least a delegated member should listen.

We will be sending a report to the Senate Committee as soon as we have answers to questions submitted to the OSC by SIPA members. This could take a couple of weeks.

The investment industry and the current regulatory system have failed small investors. If our government fails to take action it will be a breach of trust with Canadians.

Is it time to warn the public that it is "INVESTOR BEWARE" or will our government take corrective action to SAVE OUR SENIORS?

Meanwhile our government has the Gomery Commission over a few hundred million dollars that has enriched a few individuals but has not resulted in the devastation of Canadian's lives the way financial predators activities do.

Surely enough has been said at the Gomery commission to indicate there is wrongdoing and enable the individuals involved to be punished by being cast out and have their ill gotten gains confiscated.

We need no less with our financial services industry.

Those who are responsible for robbing our seniors should be placed in the same position as their victims. They should lose everything they have, be cast out and face a future without power to generate income, and no hope of ever recovering. Only then, will these widespread practices of abuse be minimized.

Crime should not pay.

Please help our seniors.

Sincerely

Stan I. Buell

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Small Investor Protection Association

NATIONAL POST ARTICLE BY DIANE FRANCIS – JUNE 28, 2005

Investors seeking redress forced into Catch-22
Shorter limitation period leaves even fewer choices

Diane Francis - Financial Post
Tuesday, June 28, 2005

The move by some provinces to reduce the limitation period for lawsuits from six to two years tips the playing field even more against investors and in favour of the bank-owned brokerage industry.

In Canada, a damaged investor has two remedies: A lawsuit or a complaint to the Ombudsman for Banking Services and Investments (OBSI). This is not an autonomous government-funded agency but a dispute resolution service offered by the banks and brokers themselves in the hopes of averting expensive litigation.

This organization was set up by the bank-dominated investment industry in answer to an Ottawa proposal to set up its own, independent national ombudsman as most other countries have.

Obviously, the banking lobby weighed in heavily and convinced the Liberals to let them enjoy the privilege of adjudicating disputes against themselves. The result was OBSI.

This process is not only unacceptable, because ombudsmen should be truly independent, but it's also arduous. Before an investor can benefit from this "service" he or she must proceed through the accused bank-owned brokerage firm's manager, compliance officer and then the individual ombudsman of the bank involved.

Once all that's finished, then the investor may take the case to the Ombudsman for Banking Services and Investments. But OBSI won't accept a case if the investor has already sued.

All of which amounts to a Catch-22 because there is no way an investor could possibly jump through all those bureaucratic hoops within two years.
And with the statute of limitations being shortened, investors don't have choices.

By the time they complete the OBSI gauntlet, time will have run out to sue.
"Investors will be unable to take the risk of pursuing complaints through normal channels because they could find themselves statute-barred from civil action when they eventually find out the industry processes won't help," says Stan Buell, head of the Small Investor Protection Association, which is based in Ontario.

Likewise, Canadian investors will find they have no legal remedy if they go to regulators such as the Ontario Securities Commission. That's because investigations often take more than two years, by which time they will have lost the right to sue.

Mr. Buell's investor organization obtained a legal opinion that agreed with their interpretation of the changes to the limitations and has contacted regulators, the provincial governments involved as well as the Senate to complain -- without success.

"The Ontario Limitations Act applies to civil litigation generally. Some situations are excepted. It is not as straightforward as it seems. We have been trying to arouse interest as we believe it will become a major issue not only for small investors but for many Canadians who are unable to act within the two-year limitation period," he said.

"It seems we are being misled by the regulators and by the government. We became aware of the limitation period issue in late April when we learned that Ontario passed the Ontario Limitations Act on Jan. 1, 2004.

"When we first approached the OSC with our concern we were told that it's OK, the Securities Act is carved out so all is well. But the Securities Act only defines limitation periods that benefit the OSC. The Limitations Act applies to investors taking civil action. Two years. That's it," he added.

Alberta and Saskatchewan have followed suit and other provinces are probably going to bring about similar legislation.

Proponents argue that the two-year limit is reasonable and brings needed uniformity to the process.

For instance, in the past architects could be sued up to six years after the cause of the problem arose. Police and public officials had to be sued within six months of an occurrence. Health care practitioners within a year.

Uniformity may be desirable, but the limit is not reasonable for investors given the current process in place for helping investors obtain remedies, whether it's the industry process or the regulatory one.
Ideally, a national ombudsman agency for investors should be set up, as recommended by Ottawa years ago. It should be funded by the public, and completely independent from the banking/brokerage oligopoly.

While that may take time to come about, governments should tell OBSI that it cannot refuse to take cases if investors have sued because of the two-year limitation in several provinces.

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Small Investor Protection Association

SMARTINVESTING.CA ARTICLE BY WAYNE CHEVELDAYOFF – July 14, 2005

Law-suit limitation makes family teamwork on investments even more important

by Wayne Cheveldayoff, 2005-07-14

There is an important connection between a recent survey showing Canadians are not talking about money with their aging parents and the move by some provincial governments to reduce from six years to two years the limitation period on civil law suits related to investment losses.

What it boils down to is the following: Parents and children should be talking and helping each other on investments because if money is lost through inappropriate advice or wrongdoing, there is even less chance now of getting it back.

The reduction in the law-suit limitation period was highlighted recently by the Small Investor Protection Association (SIPA) (www.sipa.to), which believes it is the single most important policy issue for individual investors.

Stan Buell, SIPA's founder, says the stakes are high.

"Gag orders (related to settlements) prevent the public and the media from knowing the magnitude of the problem of investors losing their life savings due to widespread industry practices of wrongdoing," Mr. Buell states.

"We estimate investor losses due to wrongdoing to be well in excess of $1 billion every year. It's hard for us to estimate it accurately but it's huge. If the public knew how big it was, they'd be more careful about their investing."

Mr. Buell thinks a two-year time limit on the right to sue is simply too short.

"When people suffer a significant loss, it can take more than two years to deal with the betrayal of trust and the disruption to life, let alone getting organized to take legal action."

Another factor is the time it takes for most people to work their way through investment dealer and regulator channels to try get their money back without resorting to a law suit.

"If it takes them more than two years to find their way through the system, to learn that they're not going to get their money back through the regulators, then they're out of luck."

The curtailment from six to two years in the civil litigation limitation period became effective in Ontario on January 1, 2004 and subsequently in Alberta and Saskatchewan. It covers other things as well and while it was not specifically directed at individual investors, it nevertheless applies to them. Other provinces have varying limitation periods up to six years.

If you suffer a loss, you can ask a lawyer to launch a suit right away, although the loss would have to be substantial to make it worth the lawyer's time.

But if you start a civil law suit, the Ombudsman for Banking Services and Investments (OBSI) won t accept your case for resolution. And to be considered by OBSI, you need to have already worked your way through the financial institution s branch manager, compliance officials and, if bank-owned, its own ombudsman. It all takes time and two years is not enough for every case.

Individual investors could reasonably conclude that the system is stacked against them. Certainly, Mr. Buell believes it is, based on the hundreds of cases brought to his attention.

So, what should you do if something is stacked against you?

My answer is don t get involved. That means making sure that inappropriate advice or wrongdoing are just not allowed to happen in your or your family s investment life.

In a lot of families, where parents may not be as knowledgeable about investing as their children, or perhaps too trusting than they should be, children can be an important resource for their parents, perhaps checking out investment recommendations or sitting in on meetings with investment advisors.

The Decima Research survey looking at families and money, sponsored by Investors Group (and published June 28 on www.newswire.ca), rightly pointed to the need for children to get more involved in estate planning with their parents.

But while one wouldn t expect an organization like Investors Group with its legion of investment advisors to focus on it, there is an equally important need for children and parents to work as team to make sure money is appropriately invested and not whittled away by inappropriate advice or wrongdoing – in other words, that there is actually something left over for the estate.

Wayne Cheveldayoff is a former investment advisor and professional financial planner. He is currently specializing in financial communications and investor relations at Wertheim + Co. in Toronto. His columns are archived at www.smartinvesting.ca and he can be contacted at wcheveldayoff@yahoo.ca.

The URL for this page is http://www.smartinvesting.ca/articles/20050714010100.html

Small Investor Protection Association

TASCONA NEWS RELEASE ON LIMITATIONS PERIOD – JULY 14, 2005

NEWS RELEASE

JOE TASCONA, MPP
Barrie-Simcoe-Bradford

LIMITATION PERIOD REDUCED TO TWO YEARS

Rights of investors being jeopardized

(July 14, 2005) Barrie – Bill 213, *Justice Statute Law Amendment Act,* 2002, enacted the Limitations Act, 2002, which provides for a reduction in the legal limitation period, from six years to two years.

MPP Joe Tascona, Opposition Critic to the Attorney General, is addressing this issue because of concerns that the two year limitation period in effect from January 1, 2004, is not long enough for investors seeking restitution after suffering serious financial damages due to the wrongdoing of the financial services industry. The Attorney General's position is that plaintiff interests do not need further protection.

"The revised Limitations Act does not adequately provide for the rights of investors, particularly widows and seniors, who are endeavouring to seek justice through civil litigation", said Tascona.

Tascona will be holding a press conference at Queen's Park on Monday, July 18, 2005, to raise public awareness of this issue. With him will be representatives of CARP (Canadian Association of Retired Persons) and SIPA (Small Investor Protection Association).

"The problem of seniors losing their life savings due to investment industry wrongdoing is much greater than acknowledged", said Stan Buell, President of SIPA. "Scandals such as mutual fund market timing, hedge fund collapses, corporate misdeeds, and governance failures are robbing Canadians of their life savings. Seniors seem to be targeted. Victims last recourse to obtain restitution is civil litigation, and now that right is being jeopardized by reduced limitation periods, from six years to two years."

The press conference will be held at 10:30 Monday, July 18th, at the Media Room, Queen's Park.

-30-

Contact: MPP Joe Tascona, Official Opposition Critic for the Attorney General, 705-715-6707

ADVISOR.CA ARTICLE BY STEVEN LAMB – JULY 18, 2005

Small investors push for legislative reform

Steven Lamb

(July 18, 2005) Ontario's small investors and seniors are being hung out to dry by the current statute of limitations on civil litigation for breach of trust, according to a group of investor advocates. The advocates and the province's official opposition critic today called for the repeal of the Limitations Act, 2002.

The call to repeal the law was made in a joint press conference involving Stan Buell, president of the Small Investors Protection Association (SIPA), Judith Muzzi, president of United Senior Citizens of Ontario, Bill Gleberzon of Canada's Association for the Fifty Plus (CARP) and Conservative MPP Joe Tascona, of the Barrie-Simcoe-Bradford riding.

The Limitations Act, 2002 reduced the statutory limitation on suing over breach of trust to two years from six. The two-year limitation does not apply to acts of fraud, which are covered by the Criminal Code.

"We don't feel that's a sufficient period because of the amount of money involved in this industry," says Tascona, leaving out any mention that it was his own party that crafted the legislation in the first place, before the Liberals won the 2004 election.

"There are many agencies that profess to offer investor protection and yet they have allowed this legislation to go through with out objecting to it," said Buell. "My question is: who is really providing investor protection?"

The problem with the two-year limitation, Buell says, is that by the time an investor goes through the "proper channels" of filing a complaint with the regulators, the window could be nearly shut.

"Those who try to follow the industry process take a long time to get through the process — quite often more than two years," Buell said. "The two-year limitation on taking civil action is just not enough, particularly for seniors."

Buell says it is too easy for accused investment firms to stall the process once the investor files a regulatory complaint, delaying the filing of a suit until the two-year limit has expired.

"It is important that the limitation period be removed completely from the Ontario Limitations Act," he said. "It is important that people have more time to deal with these issues and seek resolution."

Despite the fact the limitations were introduced by the former Conservative government, the Liberal government is standing by the current law. Buell shared a letter he received from the current Attorney General's office which read, in part:

"Our new limitations law has been developed based on principles that recognize and fairly balance the competing interests of both plaintiffs and defendants ... [but] we all would also want to be able to live our lives without fear that our past actions may become subject to a legal action so many

years into the futures that we would be discouraged from engaging in innovation and entrepreneurship."

Citing accounting scandals at Enron, WorldCom and Nortel, along with the mutual fund market timing cases and the collapse of Crocus and Portus, the advocates say small investors deserve more protection than potential defendants.

"This change is just another form of financial elder abuse," said CARP's Gleberzon. "Like the others on this panel, we urge the government to reconsider the legislation — to at least reinstitute the former time period."

Filed by Steven Lamb, Advisor.ca, *steven.lamb@advisor.rogers.com*

NATIONAL POST ARTICLE BY WOJTEK DABROWSKI – JULY 21, 2005

Tory MPP on side with extending limitation
TWO YEARS TOO SHORT A PERIOD

Stan Buell, head of the Small Investor Protection Association, says wronged investors going through the complaint-handling process can spend longer than two years.

BY WOJTEK DABROWSKI
Financial Post

Thursday, July 21, 2005

The Small Investor Protection Association has obtained the backing of a Progressive Conservative politician in Ontario in its attempt to change the limit on how much time investors have to sue for restitution those who have wronged them.

Joe Tascona, the opposition critic to Attorney General Michael Bryant, launched a petition yesterday to strike down the two-year limit that applies to investors who lost money due to wrongdoing of the financial-services industry.

Ontario's Limitations Act of 2002 cut the time during which such legal action can be launched to two years from six. the Act was proclaimed in January, 2004.

"There's a lot of concern about this," said Mr. Tascona, "and I think that once the public of all ages becomes aware of the situation, they're going to look for some better representation and better response from the Attorney General."

The limitations issue is the top concern facing small investors today, SIPA president Stan Buell said.

"This issue will affect victims today, will affect victims into the future," he said. "Two years [to take civil action] is just not enough. We know that from talking to hundreds of people."

Calling the loss of one's savings a "life-altering event," Mr. Buell said that by the time an aggrieved investor gathers needed information, meets with regulators and files complaints, two years can pass.

"None of that activity stops the clock," he said. "So people can spend a lot of time going through the complaint-handling process and find out that it's too bad, it's too late" to sue.

While the Limitations Act was brought in by the Conservatives, Mr. Tascona said he withheld his vote during its second and third readings and never spoke out in its support.

Mr. Buell said he turned to Mr. Tascona after not getting much response from the governing Liberals, including the Attorney General's office.

Valerie Hopper, a spokeswoman for the Ministry of the Attorney General, said, "We're looking at everything right now, just monitoring [the legislation], seeing what the effects are and seeing if it's doing what it's supposed to be doing."

Ms. Hopper added that changing the limitation period has not been ruled out.

wdabrowski@nationalpost.com

Small Investor Protection Association

A Voice for the Small Investor

Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
121 King St. West, Suite 1000, Toronto, Ontario M5H 3T9
TEL: 416-361-6332 FAX: 416-361-9781 WEB: www.mfda.ca

August 8, 2005

The Honourable Michael J. Bryant
Attorney General
Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Mr. Bryant:

RE: Ontario Limitations Act 2002

The Mutual Fund Dealers Association of Canada (MFDA) is the national self-regulatory organization for regulating the Canadian mutual fund dealer industry. It was established in mid-1998 at the initiative of the Canadian Securities Administrators in response to significant growth of mutual funds in the late 1980's and a recognition among securities regulatory authorities throughout Canada that the mutual fund industry would benefit from more robust regulation and effective oversight of industry participants.

The MFDA is an active regulator of its 181 Member dealers registered by securities commissions to trade in mutual funds across Canada and the approximately 70,000 registered sales representatives sponsored by them.

The MFDA has been formally recognized as a self-regulatory organization by the Ontario Securities Commission and the securities commissions in each of Alberta, British Columbia, Nova Scotia and Saskatchewan and has a mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry.

I recently participated in a Town Hall Meeting in Toronto, Ontario on May 31, 2005, organized by David Brown (the recently retired as Chair of the Ontario Securities Commission), along with and others including Stan Buell of the Small Investor Protection Association.

Strong concern was expressed regarding recent amendments to Ontario's Limitations Act 2002, which came into force in January 2004 and reduced the time period within which investors must initiate civil actions from 6 years to 2 years.

This shortening of time creates a significant risk that investors with *bona fide* claims will, following their reasonable initial efforts to resolve their dispute with a dealer or sales representative with whom they were dealing, find themselves outside the limitation period and hence unable to commence an action.

Experience in all business sectors, not only the financial services industry, has shown that consumer complaint processes can take time. Time is required for the consumer to identify that

there is a problem or matter in dispute for which they require a resolution. Time is required for the consumer to evaluate that awareness or information and to identify what to do, where to turn, who to contact. Most consumers with complaints about a person with whom they have conducted business do not begin their efforts to seek appropriate resolution by retaining legal counsel at the outset and paying to commence a civil litigation.

In the financial services sector, there are well-established processes for dealing with investor complaints. Investors may refer their complaints to securities commissions, SROs such as the MFDA and the Ombudsman for Banking Services and Investments, which administers a dispute resolution process at no charge for complainants. These are beneficial processes that should be permitted to run their course without detrimentally impairing the latitude of an aggrieved investor from determining, at the conclusion of those processes, that civil litigation is warranted. They provide an important public interest benefit in that they operate to minimize potentially unnecessary civil litigation and the financial and human resource costs that would otherwise be imposed on the court system.

We believe that investor protection would be enhanced in Ontario if the Limitations Act 2002 were amended to reinstate the former 6-year time window for commencing civil actions. We encourage the Government of Ontario to restore the prior limitation period.

Yours very truly,

Larry M. Waite
President and Chief Executive Officer

(416) 943-5887
lwaite@mfda.ca

DOCs 63512

Small Investor Protection Association

SIPA LETTER TO PREMIER DALTON MCGUINTY – SEPTEMBER 10, 2005

September 10, 2005 by e-mail: Dalton.McGuinty@premier.gov.on.ca

Premier Dalton McGuinty
Office of the Premier
Legislative Building, Queen's Park
Toronto, ON, M7A 1A1

Subject – Sharia Law & Limitations Act

Dear Premier McGuinty:

We are concerned that the Ontario government is making legislative changes without reference to the stakeholders, and that these changes will have a major impact on the lives of ordinary Ontarians.

As an example the Ontario Limitations Act was proclaimed without reference to the organizations that represent Ontarian's interests. As a result many Ontarians will suffer from the reduction in Limitation Periods because those who made the decision did not realize the implications for victims of life altering events.

Canada's Association for the Fifty Plus (CARP) and the United Senior Citizens of Ontario (USCO) represent some 500,000 Ontarians and they recognize the negative impact on seniors. A letter from Mr. Larry Waite, President of the Mutual Fund Dealers Association summarizes the potential negative impact. A copy is appended.

Before making a similar mistake with legislation on Sharia Law please ensure that the stakeholders are consulted. There are groups opposing this move and you should at least listen to their reasoned argument and talk to some of the individuals who have been impacted by Sharia Law.

As leader of the Liberal Party as well as Premier of Ontario you must provide guidance and not simply lay off the responsibility on others. We trust that you will support re-examining the Limitations Act and re-consider your support for introducing Sharia Law in Ontario.

Yours very truly

Stan I. Buell, P.Eng.
President

TORONTO STAR ARTICLE BY JAMES DAW – SEPTEMBER 29, 2005

From the Toronto Star

Sep. 29, 2005

Stung investors need longer to sue
Victims' crusader winning support

JAMES DAW

The bitter lessons that Stan Buell learned during a legal dispute he settled out of court with a former stockbroker over the handling of his retirement savings help explain his dogged determination to protect others.

The founder of the Small Investor Protection Association, a retired engineer and now real estate agent, has done a splendid job of rallying support to recover for investors a longer time frame to launch a lawsuit.

As it stands now, Ontario investors who learned in early 2004 that they might have a cause of action against an investment adviser or dealer have only until early 2006 to file a statement of claim.

A new Limitations Act setting out the time limits for this and other types of legal actions came into effect on Jan. 1, 2004. Formerly, would-be claimants had six years to muster the resolve, emotional strength and money to mount a legal fight.

"We believe reduced limitation periods for Ontarians to exercise their right to start civil litigation to seek justice after they have been victims of wrongdoing is the most important issue facing Ontarians today," Buell argues.

"Seniors who have been devastated by a life-altering event need time to recover before being able to deal with issues. Also, it is quite common for retail investors to take more than two years to find their way through the financial industry's complaint-handling processes.

"This legislation must be reviewed with a view to providing relief for the victims of life-altering events."

Buell has provided a summary of the steps he and others have taken, and the influential endorsements their campaign has generated. Now it's up to Ontario Attorney General Michael Bryant and other cabinet ministers to decide whether to restore a longer limitation period.

Since Buell wrote to Bryant on behalf of the protection association on April 29, there have been several developments.

David Brown, former chair of the Ontario Securities Commission, sounded a lot like Buell when he told the Senate's Committee on Banking, Trade and Commerce on June 16 that, "For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem.

"Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these reasons, we suggest to the Ontario government that it would be well advised to take another look at this two-year cut-off."

Larry M. Waite, president of the Mutual Fund Dealers Association, urged Bryant in a letter on Aug. 8 to reinstate the former six-year time window for commencing civil actions.

Buell and association advisory committee member Ken Kivenko met with officials at Bryant's ministry on Aug. 11. They were joined in support of their presentation by representatives of CARP, Canada's association of the 50-plus, and the president of the United Senior Citizens of Ontario.
Susan Wolberg-Jenah, acting chair of the OSC, confirmed in an Aug. 30 letter that officials there appreciate that the constraints of the two-year limitation period, combined with existing dispute-resolution services, "may have unintended consequences for small investors.
"We have shared this information with the attorney general in a way that we believe is constructive and in the best interest of investors," she wrote. "We have also indicated our willingness to further discuss this matter with the government ...."
David Agnew, the new chief executive of the Ombudsman for Banking Services and Investments, confirmed Sept. 12 his office has also written to Bryant to outline some of the implications he sees for investors.
"We want to see investors treated fairly — not denied their rights because of overly restrictive time limitations, nor stampeded into unnecessary and expensive legal actions."
So far, however, Bryant has not signalled whether he is listening to all of this advice. Ministry spokesperson Brendan Crawley said yesterday he could only confirm that "the minister takes the concerns of small investors very seriously."
Small investors would not be able to take that comment to the bank, were they ever to lose most of their savings at the hands of a dishonest, unethical or merely incompetent financial adviser.
But they owe a debt of gratitude to Buell and his friends at the protection association for bringing this issue to the fore many months after the government quietly slipped through those changes to the Limitations Act.

Small Investor Protection Association

PETITION TO THE LEGISLATIVE ASSEMBLY

JOE TASCONA, MPP
Barrie-Simcoe-Bradford

PETITION

TO the Legislative Assembly of Ontario:

WHEREAS Bill 213, Justice Statute Law Amendment Act, 2002, enacted the Limitation Act, 2002, which provides for a reduction in the legal limitation period, from six years to two years.
WHEREAS the two year limitation period in effect from January 1, 2004, is not long enough for investors seeking restitution after suffering serious financial damages due to the wrongdoing of the financial services industry.
AND WHEREAS the Attorney General's position is that plaintiff investor interests do not need further protection.
WE, the undersigned petition the Legislative Assembly of Ontario as follows:

That the Provincial Government immediately pass and implement an amendment to the Limitation Act, 2002, to provide an exemption for claims by victims of financial services industry wrongdoing so that no time limitation period applies to such claims.

.

Name (Printed)	Address (Printed)	Postal Code	Signature

OTTAWA SUN ARTICLE BY DEREK PUDDICOMBE – OCTOBER 4, 2005

October 4, 2005

Family suit too late, judge rules

By DEREK PUDDICOMBE, Ottawa Sun

A Superior Court judge has ruled that the family of a woman murdered by her son waited too long to launch a lawsuit against the man's psychiatrist.

In his decision yesterday, Justice Albert Roy told the family of June Stewart, murdered by her son Michael on July 3, 2002, "it was clear that the plaintiffs commenced their action after the six-month limitation period."

In his decision, Roy indicated that the family issued their statement of claim against Dr. Alison Freeland, Michael's psychiatrist on June 18, 2003.

Section 78 of the Mental Health Act indicates all actions and prosecutions against any person or psychiatric facility must not commence after the six-month period. The mentally ill man, who was diagnosed with schizophrenia, was found not criminally responsible for killing his mother the same month.

VOLUNTARY PATIENT

On the day of his mother's death, Stewart was registered as a voluntary patient at the Royal Ottawa Hospital, where he had been a patient on and off since September 1998. He left the ROH grounds on July 3, 2002, and went to his parents' Renfrew home where he was confronted by his mother, whom he believed was "sucking energy" from him.

Police later found the body of June Stewart, a prominent Renfrew nurse, lying on the floor in the basement. She received severe blunt trauma to the head.

The family claimed that Dr. Freeland was negligent and failed to "provide adequate psychiatric care" to Stewart and "failed to make reasonable efforts to prevent him from leaving the grounds of the (Royal Ottawa Hospital)."

The family argued that the constitutionality of Section 78 of the MHA did not apply in this case and that they should be entitled to a two-year limitation period instead of six months.

"I must dismiss the plaintiff's motion regarding the constitutionality of s.78 of the Mental Health Act," Roy stated in his report.

derek.puddicombe@ott.sunpub.com

Small Investor Protection Association

SIPA LETTER TO LAW SOCIETY OF UPPER CANADA – NOVEMBER 13, 2005

November 13, 2005 copy by e-mail

Mr. Malcolm L. Heins, Chief Executive Officer
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Mr. Heins,

White-collar crime is a serious issue in Canada and is exacerbated by our lack of regulatory enforcement and the false perception that it is a victimless crime. We hear from hundreds of victims whose lives have been destroyed by white-collar criminals. Seniors and widows are crying themselves to sleep each night because they have had their life savings robbed by someone in whom they placed their trust.

It is abhorrent that our society fosters this pillaging of the pool of wealth created by citizens who have worked hard to accumulate savings for their retirement. To allow cheats and fraudsters to deprive them of their savings is unconscionable.

Solutions are never easy as long as the problem remains hidden. Once a problem is exposed solutions are often quite evident. As long as the Law Society, and other self-regulatory organizations, covers up the problems they will not only remain an inherent part of our society but also will fester and become worse.

It is time that the Law Society provides an alphabetical list of those lawyers who have been disciplined with details of the offense. There should also be a list of investigations so the public may be warned. The public has a right to be aware.

We are concerned about the Limitation Act reducing the limitation period to two years because it is next to impossible for victims of life-altering events to take action within two years. Victims who wait for self-regulatory organizations to complete their investigations may be statute barred from taking action to seek justice. This is not right.

We urge the Law Society to support the need for re-instating the six-year limitation period and to amend the Law Society Act to enable publishing lists of fraudsters.

Yours truly

Stan I. Buell, P.Eng., President

Cc Hon. Michael Bryant, Attorney General
Mr. Joe Tascona, MLA. Official Opposition Critic to the Attorney General
Mr. John Tory, MLA, Leader of the Official Opposition

TORONTO STAR ARTICLE BY ELLEN ROSEMAN – DECEMBER 4, 2005

Unhappy investors face legal minefield

MONEY 301 | Getting redress isn't easy, says columnist Ellen Roseman

Dec. 4, 2005. 02:22 AM
ELLEN ROSEMAN

A small piece of paper makes a big difference to your success as an investor.

The account application form sets out your risk profile (high, medium, low) and investment objectives (safety, income, capital gains).

An investment adviser is required to fill out the form and keep it on file. You need a copy as well.

This little-known document comes in handy later if your relationship runs aground. It's evidence to support a claim that the adviser's recommended investments were unsuitable for you.

The "know your client form," as the industry calls it, should be done in consultation with you.

But that's not always the case, as one investor found out. I'll call her Ann Smith.

A conservative investor, she was 41 years old and buying only guaranteed investment certificates.

But in 1996, the bank encouraged her to switch to a full-service brokerage account.

She agreed to do so. When she received account application forms in the mail, she filled in the areas that were highlighted.

Unfortunately, the areas she had ignored because they were not highlighted — risk tolerance and investment objectives — were filled in later by the brokerage staff.

Then her adviser recommended higher-risk investments (such as corporate bonds and equity funds). She bought them, trusting his advice.

Her investments lost money, which made her unhappy and frightened. She decided to complain and seek compensation.

"Someone at the bank without my consent filled in risk tolerance and investment objectives without my knowledge or consent," she wrote.

In April 2002, she complained to the bank. The ombudsman did an investigation for six months, which resulted in an offer of reimbursement.

Ann Smith would receive $30,000 to cover losses in three accounts. She said that was too low, calculating her losses at more than $100,000.

The bank's ombudsman said she shared responsibility because she waited too long to complain. More than a year had passed after the last trades before she began to raise concerns.

What about the account application forms filled in without her consent?

"It is not normal procedure to sign these forms in blank, but it does happen," the bank said.

Ann Smith decided to escalate her complaint. She went to the Ombudsman for Banking Services and Investments.

The OBSI recommended compensation of $20,000, or $10,000 less than before. It's independent and doesn't have to respect the bank's offer.

"Four consecutive years of high rates of return should have prompted you to question the type of investments in the account, especially if you were seeking only risk-free investments of one to three percentage points above GIC rates," said its report in August 2004.

Ann Smith lacked credibility in saying she wanted only safe investments, the OBSI concluded.

And, once she became aware her investments were not risk-free, she didn't try to mitigate her losses — for example, by liquidating her securities to buy GICs or moving her accounts to another adviser.

Though she hadn't filled in her risk tolerance, the OBSI felt the know-your-client information on file "was reasonable in the circumstances."

Finally, Ann Smith hired a lawyer and went through arbitration. This time, she was offered $15,000.

Pursuing a legal challenge was expensive and difficult, she realized. The bank had deep pockets and could afford to pay a team of lawyers to defend itself.

"I decided to take the $15,000 and just get on with my life," she says. "It cost me $5,000 to settle with them."

Getting redress for investment complaints isn't easy. The system is complex and hard to navigate.

"Unfortunately, when it comes to understanding the complaint process, the best education seems to be obtained by going through it," said the Ontario Securities Commission in a report last year.

After hearing from aggrieved investors at a town hall meeting in Toronto, the OSC plans to act on what it heard.

It's looking to "develop means to make sure the complaint process is comprehensible and accessible to all investors."

One issue came up again and again. An Ontario law that came into force last year gives investors a window of only two years to file a lawsuit.

The limitation period starts from the day you find out — or should have found out — about the loss or damage you suffered and who caused it.

The law used to provide six years, a more realistic time frame when you're dealing with a possible loss of all your life savings.

How can ordinary investors protect their own interests? I went to three people who work in complaint resolution.

Robert Goldin acts as a consultant and mediator, charging $150 an hour.

Investors should keep records of all their communication with an adviser, he says.

"Advisers make notes on their conversations. But investors don't make notes. They're in a trusting relationship and they rely on their memory."

John Vivash had a long career as a financial services executive. Today, he acts as an expert witness in investor lawsuits.

"My advice is don't sue. It's expensive and just takes forever," he says.

"The best offence is to be cautious and questioning at the beginning. Take some ownership for yourself."

Vivash has another tip: Don't complain only to your adviser. Call the branch manager when you feel something is wrong.

"Until you do that, the business has no way of knowing about your complaint."

Hugh Lissaman is a lawyer in Toronto, charging $350 an hour. He also works with investors on a contingency basis, taking 25 to 30 per cent of the settlement amount.

Get a legal opinion on whether your complaint is legitimate or not, he says. The Law Society of Canada can refer you to a lawyer who offers a free initial assessment.

Lissaman advises hiring an independent expert, especially if your complaint is about suitability.

"You'd be hard pressed to go to arbitration or trial without an expert. That will cost you $5,000 to $10,000," he says.

Next week, we look more closely at getting redress through an ombudsman service.

ATTORNEY GENERAL S LETTER TO SIPA – JANUARY 9, 2006

Attorney General
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720 Bay Street
11th Floor
Toronto ON M5G 2K1
Tel: 416-326-4000
Fax: 416-326-4016

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JAN 0 9 2006

Our Reference #: M05-07814

Mr. Ken Kivenko
Chair, Advisory Committee
SIPA
2602-2010 Islington Avenue
Etobicoke, ON
M9P 3S8

Dear Mr. Kivenko:

Thank you for your e-mail messages of November 1 and 2, 2005, regarding the proposed amendments to the *Limitations Act, 2002*. The amendment to allow potential litigants to agree to extend limitation periods and the amendment to clarify the rule regarding the suspension of limitation periods where a third party is engaged to help resolve a claim were prepared in direct response to the concerns that your organization raised.

This government takes the views of investors and consumers very seriously and we are proposing changes that will be of direct benefit to everyone who may want greater flexibility to settle their disputes out of court. The amendments will provide an opportunity for both potential plaintiffs and defendants to agree between themselves precisely how much time they wish to take to resolve their dispute without engaging in costly litigation. I encourage you to communicate with representatives of the financial services industry and explore the ways in which dispute resolution procedures could be enhanced with the passage of the proposed amendments.

In regard to your concern that it may take more than two years for a person to be able to commence legal proceedings after a life-altering event, I would say again what I understand was conveyed to you at the August meeting. At that time, Ministry officials noted that the *Limitations Act, 2002* already provides that the two-year limitation period does not run during any time in which the person with the claim is incapable of commencing a proceeding because of his or her physical, mental or psychological condition.

Thank you again for writing on this very important topic.

Yours truly,

Michael Bryant

Small Investor Protection Association

SIPA LETTER TO MPP JOE TASCONA RE PROPOSED AMENDMENT – MARCH 7, 2006

March 7, 2006

MPP Joe Tascona
Official Opposition Critic to the Attorney General
Legislative Building, Room 434, Queen's Park
Toronto, ON, M5J 2N4

Dear Mr. Tascona:

Thank you for forwarding the Attorney General's response regarding limitation periods. The proposed revisions to the legislation are inadequate to address the concerns raised in the petition. To require victims to reach agreement with the perpetrators of the causal action for an extension of the limitation period is inappropriate and unacceptable.

Victims of life-altering events such as major health issues, employment issues or white-collar crime, are at best thinking of survival, and at worst contemplating suicide. Seniors, widows and other small investors who lose their life savings when victimized by investment industry wrongdoing are devastated.

It is naïve to suggest that two years is enough time for victims to deal with these types of issues or try to reach any type of agreement, particularly with those responsible for the crime; and robbing seniors, widows and others of their life savings should be considered crime of the most serious nature.

This legislation was passed without consulting all the stakeholders, particularly those organizations that are concerned with consumer protection and victims 'rights. This faux pas must be rescinded so citizens are protected, and their rights not cavalierly eroded without consideration of the impact on victims.

This is an issue that must be acted upon before an even greater number of victims are statutorily barred from their right to civil litigation. The previous six-year limitation period had already proven problematic for some victims.

Yours sincerely

Stan I. Buell, P.Eng.
President

Cc Ms. Judith Muzzi, President, United Senior Citizens of Ontario (by e-mail)
Ms. Judy Cutler, Canada's Association for the Fifty Plus (by e-mail)
Mr. Bill Gleberzon, Canada's Association for the Fifty Plus (by e-mail)

Small Investor Protection Association

SIPA LETTER TO MINISTER OF ECONOMIC DEVELOPMENT AND TRADE – APRIL 14, 2006

April 14th, 2006 jcordiano.mpp@liberal.ola.org

Hon. Joseph Cordiano
Minister of Economic Development and Trade
Hearst Block, 8th Floor, 900 Bay St
Toronto ON M7A 2E1

Dear Sir,

On this Good Friday morning I read in the Toronto Star that you are concerned about Susan Lawrence losing her home to identity thieves and we agree that it is unfair that victims must spend tens of thousands of dollars and go to court to protect themselves against white-collar crime.

Although Identity theft is a relatively new issue, fraud is not. Many widows and seniors are being robbed by white-collar criminals every day and Government is not protecting them. There is no Authority that provides consumer/investor protection. It is not enough to say that individuals have the right to civil litigation to achieve justice. Often victims are not familiar with their rights or remedies. They trust that we live in an honest society where criminals are punished and the rights of individuals are protected.

It takes time for victims to become educated, as these lessons are not taught in our educational system. How can our Government allow banks to confiscate the property of innocent victims of fraud and require them to pursue legal action to protect themselves? The trauma of such an event has a devastating impact on the victim.

While the plight of Ms. Lawrence is abhorrent there are many other widows and seniors that are literally being robbed of their life savings by the banks, insurance companies and investment industry. Often fraud is involved. The victims face the same problem as Ms. Lawrence. Their only recourse to obtain justice is civil litigation.

Now the Government has reduced the Limitation Period to two years from six. Many victims of life-altering events will need more than two years to be able to re-act to these unfamiliar circumstances and may be statute barred from taking action. This is unfair.

We are concerned about the lack of consumer/investor protection and would appreciate the opportunity of meeting with you to discuss this matter.

Yours truly

Stan I. Buell
President

Small Investor Protection Association

E-MAIL TO CLERK STANDING COMMITTEE ON JUSTICE POLICY – APRIL 23, 2006

April 23, 2006

Ms. Anne Stokes
Clerk
Standing Committee on Justice Policy
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2

Reference: Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005. Hon. Mr. Bryant. (Referred April 11, 2006).

Dear Ms. Stokes,

We became aware of the public hearing only on April 22 and missed the deadline for oral presentations to the standing committee. However that is not as serious as victims who miss the deadline for taking civil action when they are unable to initiate action within the two year limitation period, because we are still able to make a submission in writing until May 4, 2006, which we intend to do.

Lat year the Small Investor Protection Association (SIPA) in association with the United Senior Citizens of Ontario (USCO) and Canada's Association for the Fifty Plus (CARP) expressed concern over the reduced limitation period from six years to two years, and as a result a petition was presented to the legislature last fall by MPP Joe Tascona. The amendments proposed by the Attorney General do not adequately address our concerns.

In a previous report to Government, before we were aware of the reduced limitations period, we had recommended the six year limitation period be extended for victims of life altering events.

Because SIPA has limited resources we are unable to keep current with all developments that effect small investors, and there is no authority with a mandate to protect the interests of small investors. That responsibility has been delegated to the industry that appears to create most of the problems. What is equally concerning is there appears to be no government authority responsible for issues affecting seniors, elderly, widows or women, that is au courant with the issue of Ontarians losing their life savings due to widespread wrongdoing in the "legitimate" investment industry.

The majority of the victims of investment industry wrongdoing seem to be seniors, widows and other small investors who continue to trust the industry, to trust that the regulators are effective, and to trust that Government will ensure that justice is done.

The issue of seniors and widows being robbed of their life savings is much greater than most of us can imagine. Victims are often embarrassed that they have been deceived and have lost their

savings. Those who do take action and complain, most often resolve their dispute with an out of court settlement agreement that includes a gag order so the public is not aware of the magnitude of this issue.

Access to justice will be curtailed if the limitation period is allowed to stand at two years. This is not sufficient time for victims of life-altering events to recover from the trauma of the event, to find their way through the current complaints handling process and to initiate civil action. To suggest that the limit can be extended if both parties agree is less than brilliant. It is highly improbable that perpetrators of wrongdoing will agree when already they use the legal system to "vigorously defend" situations that appear morally and ethically indefensible.

We will be making a formal written submission by the deadline of May 4, 2006.

Yours truly

Stan I. Buell, President
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INVESTOR ALERT - Limitation Periods reduced from 6 years to 2 in AB, ON, SK & NL and 3 in QC. Investors with a complaint should first consult legal counsel regarding limitation periods.

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