



SIPA has a mission:

- ?? to aid public awareness of how the investment industry operates;
- ?? to provide guidance to those who have a complaint about investments with a bank, broker, financial advisor, or other seller of financial products;
- ?? and to pursue improvement of industry regulation and enforcement.

Small Investor Protection Association - A voice for the small investor

SIPA Sentinel

The SIPA Sentinel is issued bi-monthly. From time to time we include articles and re-prints that offer opinions on subjects related to investing and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

Special edition – Limitations Period Issue

In late April 2005 SIPA first became aware that limitation periods, the time from the cause of action within which civil actions must be started, are being reduced. Given that the industry's complaint handling procedures rarely result in aggrieved investors achieving fair resolution of their disputes, and the regulators generally can not get your money back, SIPA recommends civil litigation as the best course of action to gain fair resolution.

Even civil litigation presents problems for small investors because the industry aggressively defends situations that are morally and ethically indefensible. The industry strategy is to fight hard and discourage Plaintiffs from taking action because of the cost and time involved, and the uncertainty of the outcome.

Traditionally the limitation period for taking action was six years and no limitation for issues involving fiduciary duty. Now it seems there is a move to have the six-year period reduced to two years and the no limit period reduced to fifteen years.

In late April SIPA discussed the Limitation Periods with the members of the Town Hall Panel – OSC, IDA, MFDA and OBSI. The OSC said the Securities Act was carved out from the Limitations Act and therefore the Limitation Period was still six years. Upon examination the six-year period applies only to the OSC or actions regarding statutory issues. The two-year limitation period will apply to Ontario investors seeking civil action.

Since then SIPA has contacted all of the provinces and found that limitation periods have been reduced in several provinces including Alberta, Ontario, Newfoundland and most recently in May 2005 in Saskatchewan. Quebec has reduced the six-year period to three years. The remaining provinces still have a six-year limitation but there may be situations that would precipitate reduced periods. The situation is far from clear, and with the impetus to harmonize regulation amongst the provinces there could be pressure on other provinces to fall in line.

This issue was brought up at the OSC Town Hall Event on May 31st when Ken Kivenko, Chair SIPA Advisory Committee, asked the question:

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KEN KIVENKO: *The Ontario government passed a law called the Ontario Limitations Act, which took effect last year, reducing the period where you can file a claim, to two years, from six. And as you can tell from the audience, people who are not financially literate, or ill, or don't even know that they've lost money, may not discover just how serious things are in the two-year period, and then they would lose their right to file legal claim. The only person I can address this to -- I think all of you should have helped prevent that -- would be David Brown, since he reports to a Minister. Is there any way we could have that amended, jiggled around, so we go back to a longer period for the investor to file a claim when he discovers it?*

The following is David Brown's response:

DAVID BROWN: *Thanks, Ken. This is actually one of the benefits of having the Town Hall, because as we began to prepare for this, and as Stan asked his members to start feeding into us, issues that they want to discuss, this issue was raised, and I must admit, this is the first time that I realized that this omnibus amendment that had been passed by the government was having the effect that it appears to be having on those who have complaints against their brokers or other members, other people in the financial community. We became aware of the issue, but only a very narrow piece of it, because, under the Securities Act, we have a six-year limitation period to bring in an enforcement action against somebody, and it would have been swept in under that omnibus bill, and so we made representations to the government that we should be carved out. I must admit, we didn't think, when we were making those representations, about the effect that the omnibus bill is having on the kinds of things you're talking about. I think it's a legitimate issue, and we're quite prepared to talk to the government about it, and see if we can somehow assist in at least bringing to the government's attention perhaps an unintended consequence of this bill.*

The OSC recognized the Limitations Period as an important issue for investor protection and the following are excerpts from the OSC **Draft** Report on the Town Hall Event:

Introduction:

People attending the Town Hall made it very clear that they want to see changes in a number of areas. The Town Hall underlined values that investors desire in a regulatory regime – including accountability, transparency, fairness, and effectiveness. It focused attention on a number of issues:

- the limitation period on civil actions by aggrieved investors,*
- the challenges many investors face in trying to navigate the complaint process,*
- timely and affordable restitution,*
- the need for a consumer advisory body,*
- and the value of regular town halls.*

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*Issue One: Limitation Period on Civil Actions**What We Heard:*

Many investors are concerned that their ability to seek redress through the courts is being cut short. There is considerable anxiety about the fact that under Ontario's Limitations Act 2002, which came into force in January 2004, the time window that investors have for filing a civil action has been narrowed - from six years to two years.

It was part of an Ontario government effort to bring uniformity to its limits on civil litigation actions. Limitation periods on civil actions vary among jurisdictions across the country, with most jurisdictions having either a two-year or six-year limitation period.

Investor representatives have made it clear that restoring the limitation period is one of their top priorities. It was also one of the most frequently raised questions in advance of the Town Hall, with one e-mail questioner vowing not to do business with any financial advisor until there is a statute of limitations of eight years.

There are some circumstances under which the time limit stops running - such as while a dispute is in a resolution process with an independent third party.

OBSI has consulted lawyers, who advise that their processes would likely be covered by this exemption. However, until the courts consider the issue, there is no guarantee. OBSI is actively considering other steps available to it to give greater comfort to investors on this issue. The IDA has also followed up on the legislation by amending its information brochure for investors, advising that limitation periods vary from province to province. The MFDA is doing the same and is contacting the Ontario government urging that the prior limitation period be restored.

As SIPA President Stan Buell pointed out in his concluding remarks at the Town Hall, in a life-altering event - such as losing one's life savings - people need some time to learn how to deal with the problem. And since most people do not see launching a legal action as their preferred way of dealing with a problem, they try to take steps before resorting to launching an action.

SIPA also points out that access to the civil courts is a major part of government policy regarding investor rights, one that it cites when asked about new public-sector restitution mechanisms.

What We're Doing:

The OSC has initiated discussions with the government regarding investors' concerns with the two-year limitation period, and will continue to explore ways of addressing investor concerns. In the meantime, the OSC will update investor information on the complaint process to include discussion of the applicable limitation period in Ontario.

Our Commitment

· Limitation Period: Initiate discussions with the Ontario Government

regarding the two-year limitation period on investor lawsuits, and explore

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ways of addressing investor concerns.

· Transparent and Accessible Dispute Resolution Procedures: Develop

means to make sure the complaint process is comprehensible and

accessible.

· Fair Restitution: Examine the avenues of restitution, and develop ideas to

ensure they meet the needs of aggrieved investors.

· Consumer Participation: Create an advisory body to help identify and

address issues affecting investors and ensure that the views of consumers of

financial services are well represented.

· Accountability: Hold ongoing Town Halls, and develop other vehicles to

report to the public.

NOTE: The **FINAL** Report varies slightly from the **DRAFT** Report quoted above and tends to downplay the Limitations issue, although it still retains it as an issue but relegates it to third on the list and then buries the detail text with one of the other issues.

Senate Standing Committee on Banking Trade and Commerce

SIPA submitted a report "It's a Matter of Trust" to the Senate Committee on February 14th, 2005, and was invited to appear before the Committee on April 14th. SIPA mentioned the Investor Town Hall Event and was asked to report back to the Committee after the event. At that time SIPA was not aware that the limitation periods had been reduced. When SIPA reported back to the Senate Committee on the Town Hall Event we also raised the Limitation Periods issue. On June 27th SIPA submitted an Interim Report on Limitation Periods in Canada. The following is excerpted from the SIPA Report:

6. Conclusions

Although the regulators claim to provide investor protection and continue to assure the government and the public that the Canadian investment industry is well regulated, the facts indicate that the consumer investor has no one looking after their interests.

Reduced limitation periods have been legislated in several provinces without any objection from those who claim to afford investor protection. It was not until the Small Investor Protection Association brought this issue to the attention of the regulators that anyone paid attention to the impact this reduced limitation period will have on aggrieved investors.

Industry and regulators are or should be well aware of the fact that many victims of investment industry wrongdoing have difficulty in meeting the previous six-year limitation period. Victims of extreme financial loss suffer from posttraumatic stress after experiencing a life-altering

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experience of losing their life savings. It takes several years for survivors to be able to deal with issues of this magnitude.

The industry is, or should be, aware of the delays victims encounter in the complaints handling process and that is not uncommon for aggrieved investors to consume more than two years dealing with the industry sponsored complaint handling processes.

Reducing limitation periods will result in many aggrieved investors being statute barred from taking civil action in an attempt to gain justice and restitution.

Equally concerning is the fact that the regulatory system responsible for investor protection failed to discern the impact this revised legislation would have on aggrieved investors and failed to take any action to have this impact mitigated. They also failed to provide warning to investors of this additional risk they face after the limitation periods were reduced.

The industry is beginning to react because the Small Investor Protection Association brought the issue to their attention. SIPA has limited resources and receives no government funding. It is time for government to provide funding support for NGOs like the Small Investor Protection Association until a national Investor Protection Agency is established to look after consumer/investor interests.

The current regulatory system is failing the consumer/investor and a public inquiry is needed to identify the problems and provide information to guide those who will be charged with implementing an authority to provide meaningful investor protection in Canada.

The Federal Government must take immediate action to provide consumer/investor protection. It must ensure that Canadians rights are not eroded by provincial legislation. Victim's rights must be carved out from provincial legislation that would place limits on their right to take civil action. For life altering injuries there should be no limitation period.

Capitol Hill – June 16th

On June 16th SIPA accompanied representatives from the Canadian General Accountants Association and Rosen and Associates to meet with MPs on Capitol Hill to talk about governance and investor protection. Amongst other things we discussed the fact that the provinces are reducing limitation periods and this erodes investor protection and this emphasizes the need for a national investor protection agency. The Capital Hill Group, a lobby group of which the CGA is one of their clients, organized the day.

Ontario Opposition Critic to the Attorney General

The Government and the Ontario Attorney General failed to respond to SIPA's request that the Attorney General meet with a delegation to discuss the Limitation Periods impact on small investors, so SIPA approached the opposition. After discussions with Joe Tascona, Opposition Critic to the Attorney General, a Press Conference was arranged in the Legislature Media Room at Queen's Park. Mr. Tascona was joined by SIPA, CARP, Canada's Association for the Fifty Plus, and USCO, United Senior Citizens of Ontario. These two groups are supporting SIPA's initiative on Limitation Periods. Subsequently, Mr. Tascona prepared a Petition to the Ontario Government to amend the Limitation Act. **SIPA is asking all members to support this Petition by making a copy, completing and signing the Petition and mail to SIPA, P.O.Box 325, Markham, ON, L6B 1A8.**