

## **OPEN LETTER TO ONTARIO MEMBERS OF PARLIAMENT**

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

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.

As it seems this was due to oversight now is the time to make things right.

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.

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 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.

On May 19<sup>th</sup>, 2005 James Daw wrote in the Toronto Star:

*“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.”*

The complete article is appended in the SIPA submission to the Justice Committee.

On June 16<sup>th</sup>, 2005 David Brown reported to the Standing Senate Committee on Banking, Trade and Commerce, and regarding limitations periods 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 28<sup>th</sup> 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.”*

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

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

*“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.”*

The United Senior Citizens of Ontario (U.S.C.O.) and Canada's Association for the Fifty Plus (CARP) are concerned about the potential impact on seniors who suffer life-altering events. The victims should have the right to seek justice by taking civil action. CARP and U.S.C.O. know that two years is not enough time for seniors to recover and take civil action. CARP, SIPA and U.S.C.O. jointly made representation to the Attorney General in August 2005 but proposed amendments failed to address our concerns.

When these three organizations made representation to the Standing Committee on Justice Policy September 12<sup>th</sup>, 2006 committee members commented.

After CARP's presentation by Mr. Bill Gleberzon, committee members responded:

Mr. Kormos said:

*“If there were unanimous consent, I could table that motion come clause-by-clause, and we could very speedily, effectively and meaningfully address what I will call nothing other than a sincere, honest oversight on the part of all of us who looked at the Limitations Act in its bill form and, our attention having been drawn to the problem, we should rectify it.*

*So I hope you will encourage your members to immediately sound the alarm bells and persuade all members of all caucuses to provide unanimous consent so that a mere but meaningful technicality in terms of the rules of procedure doesn't bar that amendment. I'd be pleased to make that amendment and I know Mr. Runciman would be pleased to make it. I think it would be a valuable thing.”*

**Mr. McMeekin said:**

*“Bill, thanks for your presentation. I know better than to make a commitment without having a lot more chat around the concern that you've raised, but I certainly appreciate your drawing it to our attention. ...*

*All of that aside, as I recall you're not the first group that has mentioned this. The architects/building trades folks came in and mentioned something. They talked about having an absolute deadline period but extending the opening period in which a claim could be seized. That seemed to me at the time to make some sense. They made a good case for that. You're making another similar argument, Bill, and I appreciate it. So we'll certainly take that under advisement and I'll undertake to make sure that the AG and his parliamentary assistant specifically, along with other colleagues at the committee, do take some time to make sure we review this and try to get it right.”*

Later in response to the SIPA/U.S.C.O. presentation committee members responded.

**Mr. Runciman said:**

*“Thank you very much. This is an interesting issue and very, I think, valid and legitimate concerns that you've brought forward and others today have brought forward as well. I think there's certainly an indication for Mr. Kormos and myself that we will pursue this on your behalf and on behalf of other small investors, if you will, to ensure that the appropriate amendments are put forward and the debate is carried forward on behalf of the people you represent and many others across this province.”*

**Mr. Kormos said:**

*“Thank you, folks, both of you. Look, the exploitation and ripping off of seniors who have worked so hard for so long to save modest amounts is just a shameful blot on this province. It's just remarkable. We've seen it in our constituency offices, whether it's stockbrokers—we've seen some of the churning that goes on. There's no reason for 80-year-old people to be trading stock on a weekly basis in the stock market. The only person making money there is the guy holding the poker game, taking the rake. That's the stockbroker; similarly with the mutual fund industry. Again, some of the ill-educated dealers who are ripping off our folks and our grandfolks—it's criminal.*

*It's remarkable that so much has been said, including by the former chair of the OSC. I think what we might do is ask the Ministry of the AG, if they could, to give us some sort of indication of where the ministry is at. Are they preparing legislation, are they contemplating these various commentaries from a policy perspective or not? Again, I think to be fair, if they let us know that they in fact are contemplating them, we can go*

*from that point forward; but if they're not, I say shame on them. Mr. Runciman and I have already talked to the committee about our plans to introduce an amendment in that regard and to seek unanimous consent to have it found in order."*

Mr. McMeekin said:

*"Thank you both for your excellent presentation. It's consistent with some other things we've heard. I'd just say for the record that anybody being exploited or ripped off, be they seniors or younger or whatever, is something that we want to have legislation in place to protect against. I think Mr. Kormos said earlier that sometimes governments and members from all three, four, whatever number of political parties make inadvertent decisions, maybe even inadvertent errors, and it needs to be looked at."*

In conclusion, Marie Smith, President of U.S.C.O. summed up the situation:

*"Sometimes it takes seniors more than two years to even admit to the public that that has happened. I have neighbours who wouldn't admit it to anyone for over two years, and then finally they came to a neighbour, then their family. So I do think that it takes more than two years for a senior to come to terms with something like that. If they've lost their savings, they are just devastated and they are suicidal. To me, it is one of the worst types of elder abuse. Of course, I sit on the committee for elder abuse for the province, as well, and I feel this is every bit as bad as any of the other elder abuse we have."*

Now that elected representatives have been 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.

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

Yours truly

Stan I. Buell  
President  
Small Investor Protection Association