

OPERATION UPDATE 2004

RECENT DEVELOPMENTS IN CORPORATE LAW

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Friday October 1, 2004

Ontario Bar Association
Continuing Legal Education

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The following paper reviews developments in corporate law that have taken place after August 31, 2003. Since that date there have been no amendments to the *Canada Business Corporations Act* nor to the *Business Corporations Act* (Ontario) (the “OBCA”), other than minor changes to the OBCA resulting from the *Limitations Act, 2002* and the *Public Accounting Act, 2004*. Therefore this paper deals with other developments (both legislative and judicial) which are of significance to corporate-commercial practitioners.

ONTARIO LEGISLATIVE DEVELOPMENTS

I LIMITATIONS ACT, 2000

Background On December 9, 2002, Royal Assent was given to Bill 213 which enacted the *Limitations Act, 2002* (the “New Act”). The New Act was proclaimed into force January 1, 2004. This reform legislation is an attempt to modernize a regime which consisted of the former *Limitations Act* (a collection of various English limitations statutes enacted between 1588 and 1888) and many special limitation periods contained in various other Ontario statutes providing for limitation periods running from 6 months to 20 years. This new legislation is the culmination of a reform process that had its origins in the Ontario Law Reform Commission’s 1969 *Report on Limitation of Actions*.

Overview of Features of the New Act

1. A basic limitation period of 2 years is introduced running from the day the “claim” is discovered by the plaintiff. A “claim” means a claim to remedy an injury, loss or damage that occurred or a result of an act or omission: (New Act, s.1).

2. The New Act codifies the common law discoverability principle. A claim is not discovered until the earlier of:
 - (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
 - (b) the day on which a reasonable person *with the abilities and in the circumstances of the person with the claim* first ought to have known of the matters referred to in clause (a): (New Act, s. 5) [*Italics added for emphasis.*].

There is a rebuttable presumption that a claim is discovered on the day the act or omission on which the claim is based took place.

3. Section 15 of the New Act contains an overriding provision which mandates an “ultimate limitation period” of 15 years from the date on which the act or omission forming the basis of the cause of action took place. This rule applies even where the plaintiff has not yet discovered the existence of a cause of action - subject to a few exceptions for vulnerable plaintiffs such as victims of sexual assault or minors, or where a potential defendant has wilfully concealed the fact that loss or damage has occurred. As a practice point, lawyers should consider extending their document and file retention periods to 15 years.
4. Section 19 of and the Schedule to the New Act provide for the continuance of certain special limitation periods contained in over 40 other statutes. The special limitation periods that remain are nonetheless subject to some of the principles established by the New Act such as the provisions relating to minors, incapable persons, dispute resolution and the ultimate limitation period.
5. A limitation period set out in or under another Act that applies to a claim to which the New Act applies is of no effect unless the provision establishing such period is listed in the Schedule.
6. With particular reference to the OBCA, the *Justice Statute Law Amendment Act, 2002* repealed the statute specific 2 year limitation periods stipulated in the following OBCA sections effective January 1, 2004:

34(6) relating to recovery of improper reductions in stated capital or liability for unpaid amounts owing on shares;

130(7) relating to recovery from directors of shortfall in consideration received which is less than the fair equivalent of the stated money amount for share issuances;

138(6) relating to liability of an insider with respect to insider trading.

The following deletions were also made effective January 1, 2004 by the *Justice Statute Laws Amendment Act, 2002*:

s.131(2) The requirement in subsection 131(2) of the OBCA that an action against directors for unpaid wages and/or vacation pay be brought before or within 6 months after the director ceases to hold office and within 6 months after the debts become payable was deleted;

s.243(1) The words “within 5 years after the date of the dissolution of the corporation” were deleted from subsection 243(1) of the OBCA which deals with liability of shareholders to creditors after dissolution of the corporation.

The Schedule to the New Act preserves the OBCA limitation periods set out in:

157(2) - court application re financial statements of subsidiaries;

185(18) and (19) - court applications to fix fair value;

188(9), (13) and (14) - court applications in connection with take-over or issuer bids;

189(5) - court application where corporation required to acquire securities.

7. Section 2 of the New Act excludes proceedings to which the *Real Property Limitations Act* applies. This is the old *Limitations Act* renamed. Part 1 (which deals with real property) remains intact, Part II (which deals with trusts) is pared down such that it deals only with real property held by trusts and Part III (the old non-real estate limitation periods) has been repealed.

Section 2 also provides that the New Act does not apply to proceedings in the nature of an appeal, proceedings under the *Judicial Review Procedure Act*, proceedings to which the *Provincial Offences Act* applies and certain proceedings commenced by aboriginal peoples.

8. It has always been the case that if a limitation period is not provided for, there is either no limitation period at all or, if the claim is one for equitable relief, the doctrine of laches applies. Under the New Act, a claim will be subject to absolutely no limitation period at all for those matters identified in sections 16 and 17 of the New Act (proceedings for a declaration if no consequential relief is sought, proceedings to enforce court orders or arbitration awards to which the *Arbitrations Act*, 1991 applies, undiscovered environmental claims) (see Appendix 1 to this paper for the full list).
9. There are transitional provisions (New Act, s.24) for claims based on acts or omissions that took place prior to January 1, 2004 (the “effective date”) where no proceeding had been commenced before the effective date.

If the limitation period applicable before the New Act came into force had expired before the effective date, the New Act will not, except in certain cases involving assault or sexual assault, revive the claim.

If the former limitation period had not yet expired on the effective date then:

- if the claim is one that, if it were based on an act or omission that took place after the effective date would not be subject to any limitation period under the New Act, there is no limitation period;
- if a limitation period under the New Act would apply if the claim were based on an act or omission that took place after the effective date then, (a) if the claim was not discovered before the effective date, the New Act applies as if the act or omission had taken place on the effective date, and (b) if the claim was discovered before the effective date, the former limitation period applies.

If there was no former limitation period but a limitation period under the New Act would apply if the claim were based on an act or omission that took place on or after the effective date, then:

- if the claim was not discovered before the effective date, the New Act applies as if the act or omission had taken place on the effective date;
- if the claim was discovered before the effective date, there is no limitation period.

Reference is made to the last page of this paper for a useful chart of these transitional provisions prepared by Lawyers Professional Indemnity Company.

10. The common law principles of acknowledgement are recast in statutory form. Where a person acknowledges in writing certain types of liability (a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief therefrom), the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgement was made. The acknowledgement must be made to the person with the claim or such person's agent or an official receiver or bankruptcy trustee before the expiry of the applicable limitation period. Additionally, except in the case of claims with respect to redemptions and realizations, the acknowledgement must be in writing and signed by the person making the acknowledgement or the person's agent: (New Act, s. 13).

There is a significant concern with respect to demand loans and intercompany debt. Many companies have intercompany debts outstanding that are essentially demand loans on which no interest or principal payments are made and which may be reflected only by book entries in the accounts of the related entities. Book entries no longer constitute an acknowledgement. Earlier case law under the *Limitations Act* suggests that a limitation period for a demand loan may run from the date of the loan rather than from the date of the demand for repayment. Although part payment of a liquidated sum has the same effect as an acknowledgement (New Act, s.13(11)), subsection 13(10) of the New Act requires that in all other cases an acknowledgement to be in writing and signed by the person making it or the person's agent.

Therefore to avoid the risk that a limitation period applicable to demand intercompany loans will expire, all notes and loans should be acknowledged or re-acknowledged within 2 years from their issuance or previous acknowledgement, and notes and loans issued prior to January 1, 2004 should be acknowledged in accordance with the New Act no later than the first to occur of (i) 6 years from the original date of issuance or (ii) December 31, 2005.

11. Although parties can no longer enter into tolling agreements to suspend the running of time (New Act, s. 22), the running of time can be suspended where the parties have agreed to have an independent third party resolve the claim or assist them in resolving it. If the claim is not resolved, the clock restarts when the dispute resolution process is terminated or a party terminates or withdraws from the agreement: (New Act, s.11).
12. Section 22 of the New Act provides that a limitation period under the New Act applies despite any agreement to vary or exclude it, although it does not affect an agreement made before January 1, 2004.

There is grave concern among commercial practitioners that any provision in an agreement that directly or indirectly attempts to limit or extend the time that a party has to make a claim against another may not be enforceable. This will affect the drafting of risk allocation provisions in commercial contracts and the qualification language of closing opinions.

Typically in purchase and sale agreements, representations and warranties have different survival periods. Some representations and warranties survive for a

specified number of years from the closing date. Some representation and warranties, most notably tax representations and warranties, survive for a period equal to any assessment period plus a specified number of days after such assessment period. Some representations and warranties on environmental matters may survive indefinitely. It can be argued that warranties are simply another type of contract and that it is the discovery of a breach of warranty within the contractually agreed upon terms of the obligation that will commence the running the limitation period.

The issue is how to provide for a definitive date after which no claim may be made. Various methods of confronting this problem have been suggested. I refer you to an excellent analysis by R. John Cameron in *Canadian Business Law Journal*, Vol 40 Number 1 at 109 (April 2004) (the "Cameron Article").

Method 1 - Since the New Act does not apply to agreements governed by foreign law (New Act, s.23), many lawyers are advising clients to choose the substantive law of an American common law state or England as the governing law of the contract. However if there is no connection between the contracting parties and the jurisdiction whose law they choose, there is the possibility that an Ontario court might see this as an attempt to contravene section 22 of the New Act and refuse to give effect to the governing law clause.

Method 2 - Limit the substantive right for breach of the representation and warranty, rather than limit the time period within which an action may be commenced. The

Cameron Article suggests that this may be achieved by including the following provisions in the agreement:

- “(1) a statement that the representations and warranties will survive for only a specified period of time following closing, *e.g.* 18 months;
- (2) an indemnity by each party giving the representations and warranties;
- (3) a statement that there will be no entitlement to indemnification unless notice of the claim for indemnity is given within the specified survival period; and
- (4) a statement that the only recourse for damages for breach of the representation and warranty is under the indemnity, with the intention that all other remedies for damages are excluded.”

There is no cause of action for indemnity if notice of the claim is given outside the specified period; and there is no other remedy in damages apart from the indemnity. Parties are free to cap damages or indeed totally exclude damages for breach of a representation or warranty. Parties are also free to provide that the only remedy in damages relating to a breach of a representation and warranty is the remedy provided by the indemnity provisions of the agreement. Section 22 of the New Act should not be interpreted as derogating from that freedom.

Method 3 - Provide a covenant not to sue in respect of claims discovered or notified outside a specified survival period. Although premised in the theory of freedom to

cap or limit liabilities, such a provision may be found to be unenforceable as an attempt to vary or exclude a limitation period under the New Act.

Method 4 - The contracting parties may contract to shorten or lengthen the discoverability period on the theory that Section 22 does not address discoverability and only precludes a variation or exclusion of the limitation period.

From the foregoing you will understand why Ontario lawyers are qualifying their closing legal opinions on the enforceability of contracts which are governed by Ontario substantive law.

II *TRUST BENEFICIARIES' LIABILITY ACT, 2004*

New Legislation As contemplated by the Ontario Government's May 18, 2004 Budget, Ontario's Minister of Finance has tabled a proposed *Trust Beneficiaries' Liability Act, 2004* (the "Proposed Act") as part of Bill 106 (budget implementation measures) to remove uncertainty about the liability of unitholders of publicly traded trusts. The Proposed Act is substantially based on draft legislation developed by the Business Trust Sub-Committee of the Ontario Bar Association. The proposed legislation is intended to provide a clear legislative statement that the beneficiaries of a trust that is a reporting issuer and governed by the laws of Ontario will not be personally liable as beneficiaries for the obligations and liabilities of the trust or any of its trustees that arise after the Proposed Act comes into force. The draft legislation provides that a trust shall be deemed to be governed by the laws of Ontario if its declaration of trust or other constating instrument states that it is governed by the laws of Ontario.

Background Much of the law relating to trusts in Canada is based on common law jurisprudence. This is no comprehensive statutory limitation on the liability of holders of units of an income trust or real estate investment trust for liabilities or other obligations of a trust, as there is for shareholders of a corporation under corporate law.

Declarations of trust for income trusts and real estate investment trusts typically waive the trustee's right of indemnification from beneficiaries and generally contain provisions to prevent characterizations (i) that the trustees would be considered "bare trustees" or (ii) that the beneficiaries have power to control the conduct of the trustees to such an extent that the trustees are their "agents" or (iii) that the beneficiaries are "partners" with the trustees. Additionally an operating corporation with limited liability or limited partnership is usually interposed between the trust and the business operations. Cumulatively these precautions make the risk of liability flowing through to the beneficiaries, as beneficiaries, remote.

However the business and investment community, including institutional investors and risk rating organizations, are seeking clarity and reassurance as to the residual liability of beneficiaries of those trusts should the trust itself become insolvent. Progressive jurisdictions like Maryland and Alberta have already acted. Alberta's *Income Trust Liability Act* came into force July 1, 2004.

Comments Note the Proposed Act will only protect beneficiaries, as beneficiaries. If the facts are such that the trustees can be characterized as "bare trustees" or "agents" or "partners" of the beneficiaries, liability will still flow to the beneficiaries in spite of the

Proposed Act. Similarly an interposed operating entity must be structured so that it is not a mere “agent” of the trust.

Note also that jurisdictions that have implemented the Hague Convention on the Law Applicable to Trusts do allow for designation of the governing law in the trust instrument.

Note also that the Proposed Act does not contain governance provisions for such trusts.

III *PUBLIC ACCOUNTING ACT, 2004*

On June 10, 2004, Bill 94, the *Public Accounting Act, 2004* was passed with unanimous consent and received Royal Assent on June 17, 2004. This new legislation will be proclaimed into force this fall and thereupon the *Public Accountancy Act* will be repealed and clause 49(2)(b)(ii) of the OBCA will be amended to replace the name “*Public Accountancy Act*” with the name “*Public Accounting Act, 2004*”.

The *Public Accounting Act, 2004* will:

- enable qualified Chartered Accountants, Certified Management Accountants and Certified General Accountants to obtain a licence to practise public accounting under a new “parallel licensure” system;
- empower the reconstituted Public Accountants Council (“PAC”) to implement new regulatory standards that accounting organizations must meet to grant licences, harmonize the process with evolving national and international standards and improve transparency, accountability and independence within the public accounting field;

- allow the three principal accounting bodies - the institute of Chartered Accountants of Ontario, the Society of Management Accountants of Ontario and the Certified General Accountants of Ontario - to license and regulate individual public accountants once they meet the standards set by the PAC;
- require the accounting bodies to file annual reports with the government; they will also be subject to rotating audits by the PAC.

In the result, given that Chartered Accountants will no longer hold a monopoly on licensed public accounting, small businesses and corporations in Ontario should expect to see a wider choice of public accounting services.

FEDERAL LEGISLATIVE DEVELOPMENTS

I BILL C-45, AN ACT TO AMEND THE *CRIMINAL CODE* (CRIMINAL LIABILITY OF ORGANIZATIONS)

Bill C-45 was proclaimed into force on March 31, 2004. Essentially this legislation addresses an organization's obligation to provide a safe workplace and overcome the difficulty in attributing to organizations, including corporations, criminal liability for the acts of their representatives.

In summary, this enactment amends the *Criminal Code* to:

- (a) establish rules for attributing to organizations, including corporations, criminal liability for the acts of their representatives;

- (b) establish a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public;
- (c) set out factors for courts to consider when sentencing an organization;
and
- (d) provide optional conditions of probation that a court may impose on an organization.

An organization's directing mind is now defined as a "senior officer" meaning a representative of the organization who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organization's activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer. A "representative", in respect of an organization, means a director, partner, employee, member, agent or contractor of the organization.

Three key new sections added to the *Criminal Code* are section 22.1, 22.2 and 217.1:

22.1 In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if

(a) acting within the scope of their authority

(i) one of its representatives is a party to the offence, **or**

(ii) two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one

representative, that representative would have been a party to the offence; **and**

(b) the senior officer who is responsible for the aspect of the organization's activities that is relevant to the offence departs -- or the senior officers, collectively, depart -- markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence

22.2 In respect of an offence that requires the prosecution to prove fault -- other than negligence -- an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers

(a) acting within the scope of their authority, is a party to the offence;

(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; **or**

(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

In the result the difficulties faced by prosecutors in the *Westray Mine* case are overcome in that an organization's criminal liability can now arise from the conduct of two or more different persons within the organization.

II BILL C-13, TO AMEND THE *CRIMINAL CODE* (CAPITAL MARKETS FRAUD AND EVIDENCE-GATHERING)

Bill C-13 received Royal Assent on March 29, 2004. Sections 2 to 8 came into force September 15, 2004. Section 1 (which deals with the definition of "Attorney General") has yet to be proclaimed into force.

Bill C-13 creates new *Criminal Code* indictable offences for insider trading, tipping (conveying inside information) and threatening or retaliating against employees for disclosing unlawful conduct (whistleblower protection). The penalties are up to 10 years for insider trading, up to 5 years for tipping and up to 5 years for the whistleblowing offence.

For purposes of the insider trading offence, a person is guilty of an indictable offence who, directly or indirectly, buys or sells a security, knowingly using inside information that he

(a) possesses by virtue of being a "shareholder" of the issuer of that security, which presumably as a result of subsection 382.1(3) excludes shareholders of public companies which are reporting issuers in Ontario owning less than 10% of the issued securities of the issuer;

(b) possesses by virtue of, or obtained in the course of, his business or professional relationship with that issuer;

(c) possesses by virtue of, or obtained in the course of, a proposed takeover or reorganization of, or amalgamation, merger or similar business combination with, that issuer;

(d) possesses by virtue of, or obtained in the course of, his employment, office, duties or occupation with that issuer or with a person referred to in paragraphs (a) to (c); or

(e) obtained from a person who possesses or obtained the information in a manner referred to in paragraphs (a) to (d): *Criminal Code*, s.382.1(1).

With respect to tipping, section 382.1(2) provides that except when necessary in the course of business, a person who knowingly conveys inside information that he possesses or obtained in a manner referred to in subsection (1) to another person, knowing that there is a risk that the person will use the information to buy or sell, directly or indirectly, a security to which the information relates, or that he may convey the information to another person who may buy or sell such a security, is guilty of an indictable offence.

For purposes of Section 382.1 “inside information” means information relating to or affecting the issuer of a security or a security that the issuer has issued, or is about to issue, that

(a) has not been generally disclosed; and

(b) could reasonably be expected to significantly affect the market price or value of a security of the issuer.

Additionally, the search warrant provisions are expanded so that pursuant to a general or specific production order, a third party - one not under investigation - can be compelled to turn over documents. The third party has the right to object to production if it asserts privilege. But the third party cannot refuse to produce. Presumably the appropriate procedure would be to seal the documents in a container, hand them over while asserting privilege and apply immediately to the judge who issued the order for an exemption from the requirement to produce the privileged documents: *Criminal Code*, s.487.012.

CASE LAW DEVELOPMENTS

I. CRIMINAL INTEREST RATE

Section 347 of the *Criminal Code* creates the offence of (a) entering into an agreement or arrangement to receive interest at a criminal rate or (b) receiving a payment or partial payment of interest at a criminal rate. A “criminal rate” means an effective annual rate of interest that exceeds 60% on the credit advanced under an agreement or arrangement.

“interest” means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or in the

case of a mortgage transaction, any amount required to be paid on account of property taxes;

This definition of “interest” encompasses the entire cost of a loan transaction including all collateral advances, and greatly expands the common law definition of interest.

A draftsman should ensure that a commercial loan or contract which stipulates for a facility fee, standby fee, bonus, revenue participation or late payment penalties does not breach the usury provisions of the *Criminal Code*.

On February 12, 2004, the Supreme Court of Canada released its decision in *Transport North American Express Inc. v. New Solutions Financial Corp.*, [2004] 1 S.C.R. 249 wherein it reviewed the spectrum of remedies available in exercising judicial discretion to be employed in cases arising under section 347 of the *Criminal Code* which is summarized as follows:

The traditional rule that contracts in violation of statutory enactments are void *ab initio* is not the approach courts should necessarily take in cases of statutory illegality involving section 347. Instead, judicial discretion should be employed and a spectrum of remedies is available. At one end of the spectrum are contracts so objectionable that their illegality will taint the entire contract - exploitive loan-sharking arrangements and contracts that have a criminal object should be declared void *ab initio*. At the other end of the spectrum are contracts that, although they do contravene a statutory enactment, are otherwise unobjectionable. Contracts of this nature will often attract the application of the doctrine of severance. In each case, the determination of where along the spectrum a given case lies, and the remedial consequences flowing therefrom, will hinge on a careful consideration of the specific contractual context

and the illegality involved. If the case is an appropriate one for the court to sever only those provisions of the loan agreement that put the effective interest rate over 60 percent, and if it is conceded, as it must be, that such rewording alters the agreement of the parties, the question becomes only a choice of the appropriate technique of severance. The preferred severance technique is the one that, in light of the particular contractual context involved, would most appropriately cure the illegality while remaining otherwise as close as possible to the intentions of the parties expressed in the agreement.

The “blue-pencil” technique may not necessarily achieve that result. The change effected by the blue-pencil technique will often fundamentally alter the consideration associated with the bargain and do violence to the intention of the parties. Indeed, in many cases, the application of the blue-pencil approach will provide for an interest-free or low interest loan where the parties demonstrated in the agreement a clear intention to charge and pay considerable interest. The interaction of the blue-pencil test with the bright line separating illegal interest from legal interest often leads to erratic results dependent on the form of the contract, rather than its substance.

The application of “notional severance” to the agreement between the parties is generally more appropriate whereby only interest in excess of the 60% criminal rate is disallowed.

Four considerations are relevant to the determination of whether public policy ought to allow an otherwise illegal agreement to be partially enforced rather than being declared void *ab initio* in the face of illegality in the contract: (1) whether the purpose or policy of section 347 would be subverted by severance; (2) whether the parties entered into the agreement for an

illegal purpose or with an evil intention; (3) the relative bargaining positions of the parties and their conduct in reaching the agreement; and (4) the potential for the debtor to enjoy an unjustified windfall.

The Ontario Court of Appeal decision in this case that judicial severance only permits the striking of distinct promises from a contract (i.e. blue pencil severance) was specifically over-ruled and notional severance was held to be a valid judicial severance technique. The Ontario Court of Appeal had struck one of four distinct interest payment promises resulting in a 30.8% effective interest rate rather than a 90.9% interest rate.

In the result, the Supreme Court of Canada applied “notional severance” to reduce the effective annual rate from the 90.9% that the contract provided for to exactly 60% so that the agreement would comply with section 347.

Subsequently on April 22, 2004 the Supreme Court of Canada released its decision in *Garland v. Consumers' Gas Co.*, 2004 SCC 25 wherein Consumers' Gas Co. was ordered to repay late payment penalties collected by the utility in excess of the interest limit stipulated in section 347 of the *Criminal Code*.

September 15, 2004

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APPENDIX 1

LIMITATIONS ACT, 2002

No limitation period

16. (1) There is no limitation period in respect of,

- (a) a proceeding for a declaration if no consequential relief is sought;
- (b) a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court;
- (c) a proceeding to obtain support under the Family Law Act or to enforce a provision for support or maintenance contained in a contract or agreement that could be filed under section 35 of that Act;
- (d) a proceeding to enforce an award in an arbitration to which the Arbitration Act, 1991 applies;
- (e) a proceeding under section 8 of the Remedies for Organized Crime and Other Unlawful Activities Act, 2001;
- (f) a proceeding by a debtor in possession of collateral to redeem it;
- (g) a proceeding by a creditor in possession of collateral to realize on it;
- (h) a proceeding arising from a sexual assault if at the time of the assault one of the parties to it had charge of the person assaulted, was in a position of trust or

authority in relation to the person or was someone on whom he or she was dependent, whether financially or otherwise;

(i) a proceeding to recover money owing to the Crown in respect of,

(i) fines, taxes and penalties, or

(ii) interest that may be added to a tax or penalty under an Act;

(j) a proceeding described in subsection (2) that is brought by,

(i) the Crown, or

(ii) a delivery agent under the Ontario Disability Support Program Act, 1997 or the Ontario Works Act, 1997; or

(k) a proceeding to recover money owing in respect of student loans, awards and grants made under the Ministry of Training, Colleges and Universities Act, the Canada Student Financial Assistance Act or the Canada Student Loans Act. 2002, c. 24, Sched. B, s. 16 (1).

Same

(2) Clause (1) (j) applies to proceedings in respect of claims relating to,

(a) the administration of social, health or economic programs; or

(b) the provision of direct or indirect support to members of the public in connection with social, health or economic policy. 2002, c. 24, Sched. B, s. 16 (2).

Same

(3) Without limiting the generality of subsection (2), clause (1) (j) applies to proceedings in respect of claims for,

(a) the recovery of social assistance payments, student loans, awards, grants, contributions and economic development loans; and

(b) the reimbursement of money paid in connection with social, health or economic programs or policies as a result of fraud, misrepresentation, error or inadvertence. 2002, c. 24, Sched. B, s. 16 (3).

Conflict with s. 15

(4) This section and section 17 prevail over anything in section 15. 2002, c. 24, Sched. B, s. 16 (4).

Undiscovered environmental claims

17. There is no limitation period in respect of an environmental claim that has not been discovered. 2002, c. 24, Sched. B, s. 17.