

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron
Mr. Justice James G. Edmond

BETWEEN:

<i>JACK HIEBERT NEUFELD and the</i>)	<i>B. Barnes Trickett,</i>
<i>JACK NEUFELD FAMILY CHARITABLE</i>)	<i>A. W. K. Challis and</i>
<i>FOUNDATION</i>)	<i>R. Lamba</i>
)	<i>for the Appellants</i>
<i>Appellants</i>)	
)	<i>D. A. Johnston,</i>
)	<i>A. Poushang and</i>
<i>- and -</i>)	<i>S. Zagozewski</i>
)	<i>for the Respondent</i>
)	
<i>THE MANITOBA SECURITIES</i>)	<i>Appeals heard:</i>
<i>COMMISSION</i>)	<i>April 16, 2024</i>
)	
<i>Respondent</i>)	<i>Judgment delivered:</i>
)	<i>November 29, 2024</i>

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CAMERON JA

Introduction

[1] These appeals involve the question of whether *The Limitation of Actions Act*, RSM 1987, c L150 [the *LAA*], as repealed by *The Limitations Act*, SM 2021, c 44, s 53 [the *LA*], applies to compensation orders made by the respondent (the commission) pursuant to *The Securities Act*, CCSM c S50, s 148.2(3) [the *SA*]. It also involves an examination of the nature of the commission and whether it is a part of government or a government agency and, therefore, exempt from the application of the *LAA* pursuant to *The Interpretation Act*, CCSM c I80, s 49 [the *IA*].

[2] The appellants, Jack Neufeld (Neufeld) and the Jack Neufeld Family Charitable Foundation (the foundation), (collectively, the appellants) appeal the decision of a panel of the commission (the panel) that they breached certain provisions of the *SA* in relation to their dealings with Bernie Penner and Helena Penner (Helena), Back to the Bible and Youth for Christ/Portage Inc. (Youth for Christ) (collectively, the Manitoba investors) (the merits decision) and the resultant section 148.2(3) compensation orders (the sanctions decision) granted to Helena and Youth for Christ, each of whom had applied to the director of the commission (the director) for compensation (the compensation orders). While a number of other orders were made against the appellants, they only seek to set aside the sanctions decision on the basis that the compensation orders were barred by the *LAA*. Further, they maintain that section 49 of the *IA* does not apply to exempt the commission from the application of the *LAA*.

[3] These appeals were heard at the same time as the appeals in *Sokal v Manitoba (Securities Commission)*, 2024 MBCA 96 [*Sokal*]. However, that case involves the interpretation of section 148.2(7) of the *SA*, which prohibits the commission from making an order for compensatory relief in favour of a claimant who has commenced a civil court proceeding for the same loss. As well, *Sokal* relied on the arguments made in the present case that the compensation orders made in their case were statute barred.

[4] For the reasons below, I am of the view that the *LAA* was never intended to apply to proceedings under the *SA*, including the compensation orders issued pursuant to section 148.2(3). Alternatively, I would find that the commission is a part of government, thereby benefitting from Crown immunity as provided for in section 49 of the *IA*. Therefore, I would dismiss the appeals.

Background and History of Proceedings

[5] The alleged contraventions of the *SA* occurred between April 2005 and January 2006, when the appellants solicited and received a total of \$1,412,087 in funds from the Manitoba investors.

[6] In the sanctions decision, the panel neatly described the facts it had found as follows:

The [appellants]' contraventions, which took place from 2005 to 2010 (the "Material Time") involved a purported investment in a financial institution in the central South American country of Bolivia. Some of the investment monies were also used for a business that was indebted to the financial institution. The [appellants] were found to have taken investment monies from the Manitoba Investors without being registered under the [*SA*] and without having filed and been issued a receipt for a prospectus. In

exchange for the investment monies the [appellants] issued promissory notes, a letter of acknowledgement and a profit sharing agreement document to the Manitoba Investors. The [appellants] also took steps to, and purported to, transfer the obligations of the Foundation to the Manitoba Investors, to other entities notwithstanding that the Manitoba individuals and companies consistently refused to agree to such transfers.

[7] In 2008, the Bolivian government dissolved the financial institution after it collapsed over legal issues. All of the invested money disappeared.

[8] The commission commenced an investigation in October 2010, when a representative of one of the Manitoba investors provided it with documents founding the allegations.

[9] On March 6, 2015, the commission issued a notice of hearing and a statement of allegations. An amended notice of hearing and an amended statement of allegations were issued on June 10, 2016.

[10] In May 2016, the appellants brought a motion for a preliminary determination that the *LAA* applied to bar the proceedings brought against them by the commission. The panel for that hearing (not the same as the panel for the decision at issue in this case) dismissed the motion, holding, among other things, that the *LAA* did not apply to proceedings under the *SA*. While leave was granted to the appellants to appeal that decision (see *Neufeld v The Manitoba Securities Commission*, 2017 MBCA 107), this Court ultimately determined that the issue was premature as no determination had been made as to whether a compensation order would be granted (see *Neufeld v The Manitoba Securities Commission*, 2018 MBCA 101).

[11] The subsequent hearing was heard afresh before another panel (i.e., the panel) on the merits of the allegation (the merits hearing). The panel held that the appellants breached the *SA* in relation to their dealings with the Manitoba investors by trading and distributing securities without being registered and without distributing a prospectus, contrary to sections 6(1) and 37(1) of the *SA*.

[12] In addition, the panel found that that the appellants made material misrepresentations to the Manitoba investors in breach of section 74.1 of the *SA* and acted in a manner contrary to the public interest.

[13] Among other orders made, the panel made compensation orders in favour of Youth for Christ in the amount of \$123,200, and Helena in the amount of \$250,000—the maximum allowable amount pursuant to section 148.2(3) of the *SA*.

The Panel's Finding Regarding the Applicability of the *LAA*

[14] At the merits hearing, the appellants argued that the claims for compensation were barred by the *LAA*. Relying on the definition of “action” found in section 1 and the limitations found in section 2(1) of the *LAA*, they argued that the proceedings before the commission constituted an action under the *LAA* and that, the causes of action having occurred between 2005 and 2006, none of the limits delineated in section 2(1) had been met.

[15] Citing the decision of this Court in *Hupe v Manitoba*, 2009 MBCA 27 [*Hupe*], the panel found that administrative proceedings taken pursuant to the *SA* were captured by the definition of “action” in section 1 of the *LAA*. However, it further found that the commission was a “department, division or

branch of the government” (italics omitted) and therefore, benefitted from section 49 of the *IA*, which provides that provincial legislation does not bind “His Majesty” (i.e., the Crown) unless it is expressly stated to do so.

Relevant Statutory Provisions

The LAA

[16] At the outset, it is important to note that the *LAA* was repealed and replaced by the *LA*, which came into force on September 30, 2022. Nonetheless, the parties agree, as do I, that the *LAA* continues to govern this case by virtue of section 29 of the *LA*, which provides:

Proceeding commenced under former Act

29 *Despite its repeal, the former Act continues to apply to a proceeding that was commenced under that Act.*

Instances introduites sous le régime de la loi antérieure

29 *Malgré son abrogation, la loi antérieure continue de s'appliquer aux instances qui ont été introduites sous son régime.*

[italics in original]

[17] Section 1 of the *LAA* defines the term “action” as:

Definitions.

1 In this Act,

“action” means any civil proceeding but does not include any proceeding whether for the recovery of money or for any other purpose that is commenced by way of information or complaint or the procedure for

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

“action” Toute procédure civile, mais ne comprend pas une procédure qui a pour but le recouvrement de deniers ou une autre fin et qui est introduite par voie de dénonciation ou par une

which is governed by The Summary Convictions Act; ("action")	plainte ou dont la procédure est régie par la Loi sur les poursuites sommaires. ("action")
--	---

[18] Section 2 of the *LAA* provides for limitations mainly grounded in the concept of a "cause of action". Part II of the *LAA* operates when a person applies for an extension to one of the limitations. Part II is a "comprehensive enactment of discoverability provisions [that] applies to all causes of action that are . . . under [the *LAA*] or under any other [provincial legislation]" (*Rarie v Maxwell*, 1998 CanLII 17675 at para 31 (MBCA) [*Rarie*]). These provisions provide relief to persons who do not discover their cause of action until after the limitation period for it has passed.

[19] Unlike the *LA* (see s 5), which states that it is binding on the Crown, nothing in the *LAA* indicates that it binds the Crown. This is of significance because of the *LAA*'s interaction with the *IA*.

The IA

[20] Section 49 of the *IA* states:

**Crown not bound unless
expressly stated**

49 An Act does not bind His Majesty or affect His Majesty's rights or prerogatives unless it expressly states that His Majesty is bound.

**Non-obligation, sauf
indication contraire**

49 Sauf disposition contraire expresse y figurant, aucune loi ne lie Sa Majesté ni n'a d'effet sur ses droits et ses prérogatives.

The SA

[21] The key provision of the *SA* at issue in this case is section 148.2.

The relevant portions state:

Compensation for financial losses

148.2(1) On the application of a claimant, the Director may, when the commission holds a hearing about a person or company, request it to make an order that the person or company pay the claimant compensation for financial loss.

Director's decision not reviewable

148.2(2) Despite subsection 29(1), the Director's decision whether to make a request is not reviewable.

Order by commission

148.2(3) When so requested by the Director, the commission may order the person or company to pay the claimant compensation of not more than \$250,000. for the claimant's financial loss, if after the hearing the commission

(a) determines that the person or company has

Indemnisation en cas de perte financière

148.2(1) Si l'auteur d'une demande d'indemnisation lui en fait la demande, le directeur peut demander à la Commission, si celle-ci tient une audience au sujet d'une personne ou d'une compagnie, d'ordonner à cette personne ou à cette compagnie d'indemniser l'auteur de la demande pour la perte financière qu'il a subie.

Recours en revision

148.2(2) Malgré le paragraphe 29(1), la décision du directeur de présenter ou non une demande à la Commission ne peut faire l'objet d'aucun recours en revision.

Ordonnance de la Commission

148.2(3) Lorsque le directeur le lui demande, la Commission peut ordonner à la personne ou à la compagnie de verser à l'auteur de la demande d'indemnisation une indemnité maximale de 250 000 \$ pour la perte financière qu'il a subie si, après l'audience :

contravened or failed to comply with

(i) a provision of this Act or the regulations,

(ii) a direction, decision, order or ruling of the commission, or a rule made under subsection 149.1(1),

(iii) a written undertaking made by the person or company to the commission or the Director, or

(iv) a term or condition of the person or company's registration;

(b) is able to determine the amount of the financial loss on the evidence; and

(c) finds that the person or company's contravention or failure caused the financial loss in whole or in part.

...

Compensation order is in addition to other sanctions

148.2(6) The commission may make an order despite the imposition of any other penalty or sanction on the person or company, or the making of any other order by the commission, related to the same matter.

a) elle détermine que la personne ou la compagnie a contrevenu ou a omis de se conformer :

(i) à la présente loi ou aux règlements,

(ii) à une de ses directives, de ses décisions ou de ses ordonnances ou à une règle prise en vertu du paragraphe 149.1(1),

(iii) à un engagement écrit pris envers elle ou le directeur,

(iv) à une condition de l'inscription de la personne ou de la compagnie;

b) elle peut déterminer le montant de la perte financière en se fondant sur la preuve;

c) elle conclut que la contravention ou l'omission a entraîné tout ou partie de la perte financière.

...

Ordonnance et autres sanctions

148.2(6) La Commission peut rendre une ordonnance d'indemnisation malgré toute autre pénalité ou sanction que la personne ou la compagnie s'est vu imposer à l'égard de la même question ou malgré les autres ordonnances qu'elle a

rendues à l'égard de cette question.

...

Enforcement of order

148.2(10) Despite subsection (9), a claimant in whose favour the commission makes an order may file a certified copy in the Court of King's Bench. The filed order is enforceable as a judgment of the court in favour of the claimant and against the person or company the commission ordered to pay the compensation.

...

Exécution de l'ordonnance

148.2(10) Malgré le paragraphe (9), si la Commission rend une ordonnance d'indemnisation en sa faveur, l'auteur de la demande d'indemnisation peut en déposer une copie certifiée conforme auprès de la Cour du Banc du Roi. Cette ordonnance peut alors être exécutée au même titre qu'un jugement de ce tribunal rendu en faveur de l'auteur de la demande et contre la personne ou la compagnie tenue de verser l'indemnité.

Issues

[22] Two issues are raised. One is whether the *LAA* applies to proceedings under the *SA*. The other is whether the commission is exempt from the application of the *LAA* pursuant to section 49 of the *IA*. The order in which these issues should be decided is a bit circular. For example, if section 49 of the *IA* applies and the commission is exempt from the *LAA*, there is no need to engage in an exercise of statutory interpretation to determine the applicability of the *IA* to the *SA*. However, the Supreme Court of Canada has stated that, where possible, cases should be decided without resort to Crown immunity (see *Quebec (Attorney General) v Canada (Human Resources and Social Development)*, 2011 SCC 60 at para 16).

[23] The foundation of the decision in these appeals is that the Legislature never intended that the *LAA* would apply to proceedings under the *SA*. The finding that section 49 of the *IA* applies to the commission is an alternative finding. Thus, I will first deal with the applicability of the *LAA* to the *SA*.

Standard of Review

[24] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 33, 36-37, the majority of the Supreme Court indicated that the presumption of reasonableness for review of administrative decisions is rebutted where the Legislature has indicated a different standard should apply. Where a Legislature has provided an appeal mechanism to the courts (whether with or without leave), it has expressed such an intent. Therefore, the appellate standards in *Housen v Nikolaisen*, 2002 SCC 33, apply: questions of law are subject to appellate review on the standard of correctness.

[25] In this case, section 30 of the *SA* provides for an appeal of a decision of the commission to this Court. The issues raised in these appeals involve questions of law that are reviewable on the standard of correctness.

1. Applicability of the *LAA*

Positions of the Parties

[26] The appellants argue that the *LAA* applies to proceedings under the *SA* on the basis that section 148.2(3) of the *SA* “provides a statutory route to a civil remedy.” They describe the steps in section 148.2(3) leading to a compensation order as an alternative procedural method that is parallel to a

civil action. For example, they compare the statement of allegations as a form of pleading, the commission's investigation as paralleling discovery and the hearing as a trial. Finally, they emphasize that a compensation order granted pursuant to section 148.2(3) is filed in the Court of King's Bench as a judgment pursuant to section 148.2(1) of the *SA*.

[27] Furthermore, the appellants rely on the finding of the panel that claims under section 148.2(3) of the *SA* fall within the definition of action in section 1 of the *LAA*.

[28] The commission maintains that the panel erred in its initial finding that the *LAA* was applicable to proceedings under the *SA*. Its position is that the Legislature never intended the *LAA* to apply to the *SA* or the proceedings in question. In this regard, the commission argues that the *SA* contains specific limitation periods that apply to both criminal and civil proceedings. However, it points out that the *SA* does not specify any limitation for regulatory or administrative proceedings. It submits that this is evidence of the legislative intent that it is not bound by the *LAA*.

[29] Furthermore, the commission argues that an application for compensation under the *SA* does not constitute a cause of action as defined in the *LAA*. It submits that administrative hearings under the *SA* are not civil proceedings or civil actions to which the *LAA* applies. Rather, the commission argues that proceedings before it constitute regulatory proceedings.

Principles of Statutory Interpretation

[30] In *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 at para 21 (SCC) [*Rizzo*], the Supreme Court endorsed the approach to statutory interpretation

found in Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983), as follows:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[31] As well, section 6 of the *IA* states:

Rule of liberal interpretation

6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

Solution de droit

6 Les lois et les règlements sont censés apporter une solution de droit et s'interprètent de la manière la plus équitable et la plus large qui soit, compatible avec la réalisation de leur objet.

The Decision in Hupe

[32] Prior to embarking upon a statutory analysis of the legislation in question, I turn to this Court's decision in *Hupe*, as it was determinative in the panel's finding "that administrative proceedings under the [SA] are 'actions' within the meaning of the LAA." Contrary to the view of the panel, it is my view that *Hupe* is not determinative of the issue.

[33] In *Hupe*, there were two issues before the Court. They were (1) whether certain proceedings by the Residential Tenancies Branch taken, pursuant to *The Residential Tenancies Act*, CCSM c R119 [the *RTA*], fell within the definition of action found in the *LAA*, and (2) whether the *LAA* applied to the appellant director in light of section 49 of the *IA*. In that case, the application judge found that proceedings taken to recover money from

rental increases imposed on tenants without the landlord having complied with the *RTA* constituted civil proceedings that fell within the *LAA*'s definition of action. He rejected the argument that section 49 of the *IA* applied to the appellant director and imposed the six-year limitation period found in section 2 of the *LAA*.

[34] Justice Freedman, writing for the Court, found that the “*heart of [the] case*” (*Hupe* at para 16) (emphasis added) was whether the appellant director was bound by the *LAA* or was exempt from its application pursuant to section 49 of the *IA* (see *Hupe* at para 17). He disagreed with the application judge that section 49 of the *IA* did not apply to the appellant director. In finding that section 49 did apply, he stated that the appellant director was “an official administering [an administrative] scheme” (*Hupe* at para 51). Therefore, he found that the appellant director was exempt from the *LAA*.

[35] Nonetheless, prior to making the above ruling, Freedman JA considered the question of whether the proceedings in question fell within the meaning of action in the *LAA*. However, he was careful to preface his comments in this regard by stating: “For . . . this part of [the] decision, I will assume that the *LAA* is applicable to the [appellant] Director, as the [application] judge found, and the following discussion is premised on that assumption” (*Hupe* at para 26).

[36] Justice Freedman then applied a common approach to the interpretation of limitations legislation. That is, he asked whether the matter dealt with by the Residential Tenancies Branch was a “proceeding” within the meaning of section 1 of the *LAA*. Relying on *Markevich v Canada*, 2003 SCC

9 [*Markevich*], he found that the proceedings taken by the appellant director to collect on the overcharged rents constituted a legal proceeding.

[37] *Markevich* involved the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [the *CLPA*]. That legislation provided that provincial limitation laws applied to “proceedings by or against the Crown in respect of a cause of action” (*ibid*, s 32). In holding that the term “proceeding” encompassed the tax collection procedures in the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the *ITA*], Major J, writing on behalf of the majority, relied on this Court’s comment in *Royce v MacDonald*, 1909 CarswellMan 126 at para 5, 1909 CanLII 256 (MBCA), “that the ‘word ‘proceeding’ has a very wide meaning, and includes steps or measures which are not in any way connected with actions or suits’” (*Markevich* at para 24).

[38] Justice Major then compared the statutory collection procedures in the *ITA* to a civil legal proceeding, including the fact that a requirement to pay was analogous to a garnishing order and that the collection procedures were an “efficient and expeditious alternative to [the Crown] bringing a court action” (*Markevich* at para 25). In his view, these similarities supported his conclusion that the tax collection procedures were proceedings within the meaning of the *CLPA*.

[39] After relying on the above, Freedman JA found that, in *Hupe*, the procedures taken by the appellant director to collect the overpaid rents constituted a “‘proceeding’ for purposes of the *LAA*” (at para 30).

[40] He then continued to consider whether they constituted a civil proceeding, as that was the term used in the definition of an action in the *LAA*. In reaching his conclusion that the definition was met, he relied on *Winters v*

Legal Services Society, 1999 CanLII 656 (SCC) [*Winters*]. That case considered section 3(2)(b) of the *Legal Services Society Act*, RSBC 1979, c 227, which provided that legal services be made available to persons who “may be imprisoned or confined through civil proceedings”.

[41] In finding that prison disciplinary proceedings constituted civil proceedings, Cory J, in *Winters* at para 61, dissenting in part, stated:

I believe it is clear that the use of the word “civil” in s. 3(2)(b) must have a meaning beyond the adjudication of rights between two persons. To interpret “civil” in such a way is in effect to render s. 3(2)(b) meaningless because imprisonment or confinement would rarely result from an adjudication of rights between individuals. To reach such a conclusion would run counter to the principles of statutory interpretation set out in *Rizzo Shoes*, *supra*, since the term must be given a meaning that accords with the statute as a whole.

[emphasis in original]

[42] In my view, the contexts of the proceedings in *Markevich* and in *Winters* were different than those at issue in this case. In *Markevich*, the stated intent of *CLPA* was to have limitations apply to the Crown. There, the Crown was trying to collect a tax debt from a citizen after having done nothing to collect it for a number of years. In *Winters*, the legislation was subject to only two interpretations, one of which would have rendered its terms meaningless.

[43] In each of those cases, the legislation was broadly interpreted to protect the public. Here, such a broad interpretation of the *LAA* would have the opposite effect—it would deny a claimant a benefit clearly intended by the legislation. Therefore, I would endorse a narrow reading of Freedman JA’s decision and characterize it as *obiter* on this latter statutory

interpretation issue. This is especially so given his finding that section 49 of the *IA* applied and his comment that his limitations analysis assumed that the *LAA* applied to the appellant director.

[44] In any event, even if his comments in this regard are not *obiter*, the *SA* is a distinct legislation from the *RTA*, requiring a distinct analysis.

A Different Approach: The Decision in West End Construction

[45] A different approach to limitations legislation than that applied in *Hupe* was taken by the Ontario Court of Appeal in *Tabar v Scott*, 1989 CarswellOnt 465, (*sub nom West End Construction Ltd v Ontario (Human Rights Commission)*), 1989 CanLII 4088 (ONCA) [*West End Construction*]. The issue in that case was whether section 45(1)(h) of Ontario's *Limitations Act*, RSO 1980, c 240 [the *OLA*], applied to compensation orders made pursuant to *The Ontario Human Rights Code*, RSO 1970, c 318 [the *Code*]. Such compensation orders could be filed with the court and were enforceable as civil judgments (see *West End Construction* at para 10). While the human rights regime in that case created a cause of action that did not exist in common law and was not otherwise enforceable through the courts (see *ibid* at para 12), the statutory analysis is informative.

[46] In *West End Construction*, the definition of “action” in section 1 of *The Judicature Act*, RSO 1970, c 228 [the *Judicature Act*], applied to the *OLA* provisions defining the time limit for an action. The *Judicature Act* defined an action as “a civil proceeding commenced by writ or in such other manner as is prescribed by the rules” (at s 1). As Finlayson JA wrote, “[t]he basic question that arises is: does a limitation period enacted in England in 1833 contemplate the type of statutory remedies which we now have in our present

human rights legislation” (*West End Construction* at para 17). He further opined (*ibid* at para 20):

In my opinion, the Code is neither fish nor fowl for limitation purposes. *It does not create any cause of action which fits within the traditional format of the Limitations Act. This is demonstrated by the problems that counsel, the board of inquiry, and the Divisional Court have had in attempting to bring it within an alien statutory framework.*

[emphasis added]

[47] He asserted that it was an “oversimplification” (*ibid* at para 22) to refer to the commission in that case as an administrative body, given that its role was also investigative and prosecutorial. He then referred to the nature and purpose of limitations legislation as it evolved in England. He concluded (*ibid* at para 27):

I do not believe that it is possible to force-feed the hybrid proceedings created by the Code into a limitations statute which finds its origins in 1833 when this type of affirmative action legislation was in no one’s contemplation. I find it significant that the Master of the Rolls in *Clanmorris*, speaking in 1900, was not prepared to apply the origin of s. 45(1)(h) to the *Directors Liability Act*, 1890 (U.K.) 53 & 54 Vict., c. 64. This Act created a cause of action by a shareholder of a company to permit recovery of compensation from the directors for loss or damage sustained by the shareholder by reason of untrue statements in the prospectus of the company on the faith of which he subscribed for his shares.

[48] He opined that the approach of the Divisional Court in considering whether the matter was an action as it was used in the *OLA* was misguided on the basis that once a claimant filed a complaint with the commission, it had no control over what was to proceed from the complaint, including the

investigation of it, the decision to proceed with it, drop it, mediate it or create a board of inquiry (see *West End Construction* at para 32).

[49] He noted that an action is commenced “as of right” and “is not a request for assistance, but constitutes the unilateral implementation of a dispute resolution mechanism in accordance with prescribed rules” (*ibid* at para 33). He recognized that what occurred under the *Code* in that case was “more analogous to a civil proceeding . . . but it does not invoke the machinery of the civil process” (*West End Construction* at para 34). He was of the view that the laying of a complaint under the legislation in question was “in no sense the institution of an ‘action’” (*ibid*). He concluded that the *OLA* had no application at all and that the *Code* was never within its ambit (see *West End Construction* at paras 40-41).

[50] *West End Construction* was considered in *Royal Canadian Legion Norwood (Alberta) Branch 178 v Edmonton (City)*, 1994 ABCA 37 [Norwood]. That case involved the Legion’s application for a refund of taxes that it had overpaid between 1971 and 1987. Section 1(a) of the *Limitation of Actions Act*, RSA 1980, c L-15, defined an “action” as a “civil proceeding” (see *Norwood* at para 18). The issue in that case was whether the Legion’s appearance before the Court of Revision and the Alberta Assessment Appeal Board constituted the commencement of an action. In finding that it did not, Lieberman JA, writing for the Court, opined (*ibid* at para 22):

It is true that the definition of action applicable in the *West End Construction* case, *supra*, is narrower than that contained in the *Limitation of Actions Act* of Alberta. It is my respectful view, however, that an action is a civil proceeding to be held before a court of law, and that the applications by the respondent to the Court of Revision and before the Alberta Assessment Appeal

Board which were concerned only with the 1988 assessment do not constitute the commencement of an action[.]

[51] Earlier jurisprudence from this Court reflected a similar approach. For example, in *Dorosh v Bentwood Chair & Table Company*, 1939 CarswellMan 37 at para 21, 1939 CanLII 235 (MBCA), Dennistoun JA stated:

The word “action,” according to the legal meaning of the term, is a proceeding by which one party seeks in a Court of justice to enforce some right against, or to restrain the commission of some wrong by, another party. It includes both civil and criminal proceedings. In its more restricted or popular sense it denotes a civil action commenced by a writ: 1 *Halsbury*, p. 1, par. 1.

Also see *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 54 and *Swiss Reinsurance Company v Camarin Limited*, 2018 BCCA 122 at para 28, wherein the courts have defined a cause of action as a factual situation necessary to support a judgment from the court.

[52] However, the term civil proceeding was more broadly construed in *Hupe*.

[53] Thus, the terms action, proceeding and civil proceeding have been interpreted differently depending on context.

History of the LAA

[54] In my view, many of the same considerations raised in *West End Construction* are applicable to the *LAA*.

[55] In *West End Construction*, Finlayson JA observed that the English legislation was narrowly interpreted to permit the recovery of money ordered

in the nature of penalties. He noted that the commission in that case described itself as not penal but, rather, “remedial” (*ibid* at para 24). He explained that counsel for the commission in the case before him “characterized s. 45(1)(h) of the [OLA] as restricted to penalty clauses and of no application” (*ibid*).

[56] Justice Finlayson then referred to counsel’s reference to *Thomson v Lord Clanmorris*, [1900-03] All ER Rep 804, [1900] 1 Ch 718 (UKCA) [*Clanmorris*], relying particularly on the judgment of Lindley MR that stated that in interpreting England’s *Civil Procedure Act*, 1833, 3 & 4 Will IV, c 42 [the 1833 Act], it was important to not only consider the words used in the statute, but also its history, the state of the law it was meant to address and the defect to be cured. In performing that assessment, Lindley MR concluded that the 1833 Act was intended to apply to “actions for penalties and damages and sums of money given [to the party aggrieved] and not by way of compensation” to the person injured even though that person might receive some of it (*Clanmorris* at 806).

[57] After describing the *Clanmorris* case, Finlayson JA quoted Lindley MR’s decision that the *Directors Liability Act*, 1890 (UK) 53 & 54 Vict, c 64 was imposed to compensate the plaintiff for the loss he had sustained and was not a “penalty, damages, or sum of money imposed by statute as a punishment” (*West End Construction* at para 27; see also *Clanmorris* at 807). Therefore, Lindley MR found it was not an action within the meaning of section 3 of the 1833 Act.

[58] While Finlayson JA found that it was unnecessary to decide whether an action under section 45(1)(h) of the OLA was restricted to “penalty, damages or sum of money imposed by statute as a punishment” (*Clanmorris*

at 807), he stated, “it hardly lies in my mouth to contradict [Lindley MR]. Certainly no one else has” (*West End Construction* at para 36).

[59] The *LAA* is based on the same English legislation as that in *West End Construction*. In Manitoba Law Reform Commission, *Limitations*, Report 123 (Winnipeg: MLRC, 2010), it noted that the *LAA* was enacted in 1931 through *The Limitation of Actions Act, 1931*, SM 1931, c 30. Prior to that, the Province was subject to the *Statute of Limitations, 1623* (UK), 21 Jac I, c 16, which became law in Manitoba when it became a province in 1870 (see 5). Quoting the Alberta Law Reform Institute, it noted that while the *LAA* was significantly amended in 1967, 1980 and 2002, it was still “based on a limitations strategy formulated in England” more than four centuries ago.

Legislative History and Purpose of the SA and Section 148.2

[60] In considering the purpose of human rights legislation in *West End Construction*, Finlayson JA emphasized that it was of a “special nature”, “intended to ensure . . . the dignity of our citizenry” and “designed to maintain that purpose through administrative and judicial mechanisms which are quite alien to our traditional common law and statutory remedies” (at para 41). He concluded that the *Code* was “never within the ambit of the [OLA] and until the 1981 re-enactment, no limitation period applied to complaints under the *Code*” (*West End Construction* at para 41).

[61] In *Brosseau v Alberta Securities Commission*, [1989] 1 SCR 301 at 314, 1989 CanLII 121 (SCC), the Supreme Court described the nature of securities legislation as follows:

Securities acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this Court in *Gregory & Co. v. Quebec Securities Commission*, [1961] S.C.R. 584, where Fauteux J. observed at p. 588:

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.

[62] The legislative history of section 148.2 reinforces its special character. During the second reading of section 148.2, the Minister of Consumer and Corporate Affairs described the legislation as allowing the commission “at its regular hearings to assist those average investors to recover financial losses caused by the negligent or improper conduct of market intermediaries without cost to the investor” (“Bill 24, The Securities Amendment Act”, 2nd reading, Manitoba, Legislative Assembly, *Debates and Proceedings*, 37-3, vol 52, No 39 (29 May 2002) at 1950 (Hon Scott Smith) online: <gov.mb.ca/legislature/hansard/hansard.html>). He explained that the limit of the order (at that time) was \$100,000, and that it was registerable as a judgment in the court. He said that claims for above that amount would still be recoverable through regular court proceedings. After highlighting the role of commission legal staff to argue any appeals of such orders, the fact that the order could be made against both the individual

advisor and the firm employing that advisor, and noting that the legislation did not affect the right of the investor to choose to take other action, such as through the courts or arbitration, he concluded (*ibid* at 1951):

This is not a new line of work for the commission. It is simply an additional arrow in the quiver. *This bill represents a level of protection for the average Manitoba investor that will be unique in Canada at this time.* It is, I submit, an idea whose time has come.

[emphasis added]

[63] The approach taken by Manitoba is somewhat unusual. It is one of only three provinces wherein securities regulators have the power to make/issue compensation orders, the other two being Saskatchewan (see *The Securities Act, 1988*, SS 1988-89, c S-42.2, s 135.6) and New Brunswick (see *Securities Act*, SNB 2004, c S-5.5, s 188.1).

[64] Other securities regulators have the authority to apply to the court for compensation. As indicated in Christopher C Nicholls, *Essentials of Canadian Law: Securities Law*, 3rd ed (Toronto: Irwin Law, 2023) at 538-39):

In Ontario, for example, the power to bring such an application to the Ontario Superior Court is set out in section 128 of the *OSA*. The court has broad remedial powers under section 128 and is free to exercise those powers to make any order, notwithstanding any penalties or administrative sanctions already imposed under sections 122 and 127 for the same violations.

Section 128 lists sixteen specific orders that a court is authorized to make, but makes it clear that this list is not intended to be exhaustive. Among other things, the court is specifically authorized under section 128 to order a person or company to pay compensation, make restitution, and pay general or punitive damages.

However, it is for the OSC alone to determine whether or not to seek an order that an issuer is not in compliance with the *OSA*. An individual investor does not have the authority to do so. Breach of the *OSA*, unless specifically provided, does not entitle individuals to a private right of action.

[footnotes omitted]

[65] Similarly, compensation orders are available from the provincial superior courts in British Columbia (see *Securities Act*, RSBC 1996, c 418, ss 115(1)(a), 155.1 [the *BCSA*]) and Alberta (see *Securities Act*, RSA 2000, c S-4, s 180(1)(a) [the *ABSA*]).

[66] Interestingly, British Columbia's *Limitation Act*, SBC 2012, c 13, s 3(1)(o), was amended to specifically exclude amounts payable pursuant to its section 155.1(b) (see *Securities Amendment Act, 2019*, SBC 2019, c 38, s 99).

[67] The above overview evidences that the *SA*, especially section 148.2, “gives a special character” to the commission, “which must be recognized when assessing the way in which [its] functions are carried out under [the *SA*]” (*Brousseau* at 314).

Issues Arising from Attempts to Apply the LAA to Proceedings Under the SA

[68] In *West End Construction*, Finlayson JA supported his opinion that the *Code* did not “create any cause of action which fits within the traditional format of the [*OLA*]” (at para 20) in that case by noting that it was “demonstrated by the problems that counsel, the board of inquiry, and the Divisional Court . . . had in attempting to bring it within an alien statutory framework” (*ibid*). In my view, the same concerns arise here.

A Claimant is Not a Plaintiff

[69] Similar to *West End Construction*, a claimant who makes a request to the director for a compensation order is not a plaintiff. The claimant has no control over the proceedings, the timing of any subsequent investigation, the decision to prosecute, the time it takes to prosecute or even whether a compensation order is ultimately requested. This latter decision is one made solely by the director and is not appealable (see the *SA*, ss 148.2(1)-148.2(2)).

[70] Furthermore, the *SA* specifically provides that an order cannot be made if the claimant has commenced a civil proceeding regarding the same claim (see s 148.2(7)) and that, once the commission opens a hearing, the claimant is not entitled to commence a civil proceeding for the “same loss or any unclaimed loss arising out of the same transaction” (s 148.2(9)), thereby distinguishing a civil claim from proceedings under the *SA*.

The Commission is Not a Court

[71] A significant issue arises when contemplating Part II of the *LAA*. That part governs the extension of limitation periods based on the discoverability principle. The provisions were designed to address the injustice that can occur where a claim may be statute barred by the *LAA* before a plaintiff is aware of the existence of the claim (see *Rarie* at para 40).

[72] Section 14(1) of the *LAA* states:

Extension of time in certain cases.

14(1) Notwithstanding any provision of this Act or of any other Act of the Legislature

Prolongation du délai dans certains cas

14(1) Par dérogation à toute disposition de la présente loi ou d’une autre loi de la

limiting the time for beginning an action, *the court, on application, may grant leave to the applicant to begin or continue an action* if it is satisfied on evidence adduced by or on behalf of the applicant that not more than 12 months have elapsed between

(a) the date on which the applicant first knew, or, in all the circumstances of the case, ought to have known, of all material facts of a decisive character upon which the action is based; and

(b) the date on which the application was made to the court for leave.

Législature ayant pour effet d'établir une prescription, *le tribunal peut, sur demande, autoriser le requérant à intenter ou continuer une action*, lorsque le tribunal conclut, sur la foi de la preuve fournie par le requérant ou en son nom, qu'une période maximale de 12 mois s'est écoulée entre les dates suivantes :

a) la date à laquelle le requérant a eu connaissance pour la première fois, ou celle à laquelle il aurait dû avoir connaissance, compte tenu des circonstances, de tous les faits pertinents sur lesquels s'appuie l'action;

b) la date de la présentation de la demande de prolongation au tribunal.

[emphasis added]

[73] Section 20(1), which is also in Part II, defines "court" as "in relation to an action . . . the court in which the action has been or is intended to be brought." The question becomes whether the commission is a court for the purpose of Part II of the *LAA*.

[74] As a general rule, administrative tribunals should not be considered "courts", as that would be contrary to the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 96, reprinted in RSC 1985, Appendix II, No 5. Section 96 provides that the governor general appoints federal judges of the Superior,

District and County courts in each province. Historically, the governor general acts on the advice of the executive. As neatly explained in Richard Albert, Paul Daly & Vanessa MacDonnell, eds, *The Canadian Constitution in Transition* (Toronto: University of Toronto Press) at 86-87:

Doctrinally, the importance of s. 96 has acted as a brake on provincial legislation creating new decision-making bodies or conferring new powers on existing bodies. While the provinces have broad authority under s. 92(14) with respect to the “administration of justice” and the “organization of provincial courts,” a moment’s reflection on the seemingly innocuous s. 96 reveals an important potential problem: what if a legislature purports to create or increase the powers of a body that is similar in nature to a superior court, but whose members are not appointed in conformity with s. 96? Without tracing the tortuous history of judicial treatment of this question, Canadian courts have consistently held that the “broader import” of s. 96 “is to guarantee the core jurisdiction of provincial superior courts” against incursions by the provinces. . . . For a long time, it was thought that s. 96 fettered only the ability of provincial legislatures to pass laws for the administration of justice, but it is now clear that it applies to Parliament as well.

[footnotes omitted]

[75] This very concern was raised at the committee stage by both the Canadian Bankers Association and the Manitoba Bar Association when section 148.2 of the *SA* was proposed. Both organizations questioned the constitutionality of assigning a judicial role to the commission (see “Bill 24, The Securities Amendment Act”, Manitoba, Legislative Assembly, Standing Committee on Law Amendments, *Committee Debates*, 37-3, vol 52, No 12 (7 August 2002) at 477, 515 (John Stefaniuk, Richmond Bayes) online: <gov.mb.ca/legislature/hansard/hansard.html>. The constitutionality

of section 148.2 has not been raised by the parties and is not being decided in this case.

[76] In *Brosseau*, the Supreme Court held that, in conducting a hearing, the security commission is “not meant to act like a court” (at 313).

[77] Recently, in *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 [*Poonian*], Côté J, writing for the majority (not dissented to on this point), considered whether disgorgement orders and administrative penalties made by the British Columbia Securities Commission constitute an “order of discharge” and therefore are able to survive bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 178(1) [the *BIA*]. She held that the term court in the *BIA* did not capture administrative tribunals or regulatory bodies (see *Poonian* at para 48). Further, the fact that the orders were registerable as a judgment with the court pursuant to section 163(2) of the *BCSA*, did not make them orders imposed by the court for the purposes of section 178 of the *BIA*. She reasoned (*Poonian* at para 49):

The effect of an administrative decision being registered with a court is that the creditor is able to use civil methods to enforce the decision as if it were a judgment of that court. The registration of the decision does not change the fact that it was made and imposed by an administrative decision maker, nor does it overcome the *BIA*’s requirement that the exempt debt be imposed by a court (C.A. reasons, at para. 48; *Hennig* (C.A.), at para. 52). When a decision is registered with a court, the court’s involvement is passive, whereas the act of “imposing” a fine, penalty, restitution order or other order similar in nature requires that the court be actively involved in making the decision (see *Hennig* (C.A.), at para. 52).

[78] It is my view that the commission is not a court for the purposes of Part II of the *LAA*. This further evidences that the Legislature did not intend the *LAA* to apply to proceedings under the *SA*. It would result in an unfair and absurd situation in cases where a statement of allegations and a notice of hearing are issued outside of the limitation period (assuming that is the trigger to stop the limitation period from running).

[79] In addition to the problems arising from an attempt to apply the *LAA* to proceedings under the *SA*, there are other indicators that the Legislature did not intend for it to apply.

The SA Imposes Limitations Where They Are Intended

[80] In *West End Construction*, Finlayson JA agreed that proceedings pursuant to the *Code* were more analogous to civil than penal proceedings. As earlier mentioned, he reviewed the differences between civil proceedings and those set out in the *Code*. After finding that a complaint was not an action, he stated, that if there was to be a limitation period applied to complaints filed pursuant to the *Code*, it had to be fashioned to fit the *Code*. He observed that the Ontario Legislature had done exactly that by way of an amendment to the *Code* in 1981, which provided the Ontario Human Rights Commission the discretion to not deal with a complaint where the facts on which it was based occurred more than six months before the complaint was filed (see *West End Construction* at paras 32-35).

[81] In the present case, there is no time limitation in the *SA* on when a claimant can make a request for compensation, nor is there any limitation on when the director can make such a request to a panel.

[82] On the other hand, there are indications that the Legislature was well aware that it could impose a limitation period in the *SA*. For example, section 137 of the *SA* contains a limitation period for prosecutions arising from provincial offences heard in the Provincial Court.

[83] Importantly, there are time limits specified for civil causes of action arising from section 141 of the *SA*. For example, sections 141.4(1)–141.4(2) provide limitations for rights of action provided by sections 141, 141.1, 141.1.1 and 141.2. Section 197(1) of the *SA* establishes a time limit for civil causes of action arising from section 176. Also, section 114 establishes a time limitation related to civil causes of action set out in sections 113(1)–113(4).

[84] For ease of reference, these sections have been duplicated in the appendix at the conclusion of these reasons.

[85] As is stated in Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 247:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded.

[86] If the Legislature had intended the *LAA* to apply to proceedings in the *SA*, it could have simply stated so. Instead, it chose to impose certain limitations within the *SA*. Applying the exclusionary rule supports the conclusion that the *LAA*'s limitation periods were not intended to apply to section 148.2 of the *SA*.

[87] Similarly, section 154 addresses potential conflicts between the *SA* and *The Freedom of Information and Protection of Privacy Act*, CCSM c F175 [the *FIPPA*]. This provision demonstrates that the drafters anticipated potential conflicts between statutes but did not address conflicts related to the *LAA*.

Conclusion Regarding Applicability of the LAA

[88] In conclusion, I would agree (with the necessary modifications) to the following statement made by Finlayson JA in *West End Construction* at para 41:

The [*OLA*] never contemplated socio-economic and pro-active legislation which permits remedies never before available to an aggrieved person and creates its own enforcement process. . . . In short, the Code was never within the ambit of the [*OLA*] . . .

[89] Given the special protective nature of securities legislation, the multiple functions performed by the commission and the incompatibility of the *SA* with the *LAA*, I am of the view that it was never the intention of the Legislature that the *LAA* apply to proceedings under the *SA*. Further, neither a request by the claimant nor by the director for a compensation order made pursuant to section 148.2 of the *SA* constitutes an action or civil proceeding as contemplated in the *LAA*.

2. Applicability of Section 49 of the *IA*: Crown Immunity

Decision of the Panel

[90] As earlier indicated, the panel found that the commission was a “department, division or branch of the government” (italics omitted) and

therefore benefitted from section 49 of the *IA*, which provides that an act does not bind the Crown unless it expressly states so. Therefore, it held that the *LAA* did not apply to the commission acting pursuant to the *SA*.

[91] In reaching this conclusion, the panel stated that it “was not persuaded by the arguments of the [appellants] that the Commission is a separate entity from that of the Crown.”

[92] In its determination that the commission was the Crown, the panel considered *The Special Operating Agencies Financing Authority Act*, CCSM c S185 [the *SOAFA*], as amended by *The Budget Implementation and Tax Statutes Amendment Act, 2022*, SM 2022, c 45, s 59. It found that the *SOAFA* created special operating agencies (SOAs). It referred to the MB, *Special Operating Agencies Designation Regulation*, Man Reg 79/2006, as it appeared on January 2023 [the *Regulation*], designating the Manitoba Financial Services Agency as a SOA “with the Manitoba Securities Commission noted as the name it is operating under.”

[93] Based on the above, the panel concluded that the commission “is the Crown”.

Positions of the Parties

[94] The appellants argue that the panel erred. They maintain that because there is no legislation expressly designating the commission as an agent of the Crown, it must satisfy the common law control test to determine whether it was an agent of the Crown (the control test) (also referred to as the *de jure* test). That test involves an examination of the nature of the relationship between the entity and the Crown to determine “the nature and

degree of control which the Crown exercises over it” (*Northern Pipeline Agency v Perehinec*, [1983] 2 SCR 513 at 519, 1983 CanLII 167 (SCC)). The more control a minister or cabinet exercises over “a person, human or corporate,” the more indicative it is that the corporation or other unincorporated body is an agent of the Crown (*R v Eldorado Nuclear Ltd*, [1983] 2 SCR 551 at 573, 1983 CanLII 34 (SCC) [*Eldorado*]). Conversely, where substantial discretion is exercised independent of Crown control, an agency relationship will not be found (see *ibid*).

[95] Relying on case law applying the control test, including this Court’s decision in *Manitoba v Christie, MacKay and Co*, 1992 CarswellMan 161, 1992 CanLII 12866 (MBCA) [*Christie*], which held that the Land Value Appraisal Commission (the LVAC) was not a Crown agent, the appellants submit that there is a low level of ministerial direction over the commission and that, like the LVAC, it is an entity independent from the Crown.

[96] Next, the appellants also argue that the *SA* identifies the Crown and the commission separately.

[97] The commission submits that the control test to determine if an entity is an agent of the Crown does not apply. It argues that the commission is not a separate entity from the Crown; it is the Crown. Alternatively, it argues that it has met the control test.

What Step Would Stop a Limitation Period from Running?

[98] In their factum, the appellants also argued that section 49 of the *IA* is not engaged because the *LAA* applies to the time limit within which a claimant has to apply to the commission for a compensation order under

section 148.2(1) of the *SA*. They submitted that the claimant did not come within the meaning of “His Majesty” as provided in section 49 of the *IA*. However, at the hearing, they retracted this argument, maintaining that it was a request for compensation by the director that would stop the limitation period from running (i.e., the filing of a statement of allegations and a notice of hearing). The commission agrees with this latter position.

[99] I agree with the latter position. A claimant must apply to the director for compensation for financial loss, but the decision to seek such an order lies solely with the director. This position is supported by section 148.2(9) of the *SA*, which indicates that the claimant is not entitled to commence a civil court proceeding for compensation “[o]nce the commission opens a hearing where a claim for compensation for financial loss is one of the matters before it”. The imposition of a statutory bar against instituting civil proceedings would be the logical time for the limitation period to cease. As indicated in Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis, 2022) at 38, “[a] proceeding is commenced when the notice of hearing is issued or the complaint or other notice is filed with the tribunal, whichever is the initiating document under the statutory process” (footnote omitted).

Crown Immunity

[100] In *Saskatchewan Crop Insurance Corporation v McVeigh*, 2018 SKCA 76 [*McVeigh*], the Court considered the concepts of 1) Crown immunity—a statute does not bind the Crown unless expressly stated that it does (see paras 135-40), and 2) the maxim *nullum tempus occurrit regi*, which means time does not run against the Crown (see paras 135, 141-48).

[101] At issue in *McVeigh* was a nineteen-year delay in the prosecution of a lawsuit by the Saskatchewan Crop Insurance Corporation (SCIC) against McVeigh and others (the defendants). The defendants brought an application “pursuant to Rule 4-44 of *The Queen’s Bench Rules* [the delay rule] and the inherent jurisdiction of the Court of Queen’s Bench for an order dismissing SCIC’s claim for want of prosecution” (*McVeigh* at para 4). The chambers judge dismissed the lawsuit on the basis that the delay was inordinate. On appeal, the SCIC argued that it was immune from the delay rule. After reviewing both principles, as well as section 14 of *The Interpretation Act, 1995*, SS 1995, c I-11.2 (Saskatchewan’s equivalent to Manitoba’s *IA*, s 49), the Court noted that the relationship between the two prerogatives “has not been clearly established and some academics have described the second as simply an application of the first” (*McVeigh* at para 145). After considering the jurisprudence, it stated (*ibid* at para 148):

The conclusion to be drawn from the weight of these authorities is simply this: the Crown prerogative expressed by the maxim – *nullum tempus occurrit regi* – continues to exist in Canada. This means that time does not run against the Crown even where the Crown’s delay is attributed to the lack of diligence of its public servants.

[102] Section 49 of the *IA* is a codification of the common law presumption that a statute does not bind the Crown unless it expressly states so. This includes limitation statutes. I am of the view that the maxim *nullum tempus occurrit regi*, whether part of Crown immunity or as a standalone principle, is also relevant in cases where delay is involved.

[103] Therefore, the issue is whether the commission benefits from the Crown immunity afforded by section 49 of the *IA*.

Does the Control Test to Determine the Crown Apply?

[104] In my view, before applying the control test, as was done in *Christie*, it is important to determine whether it is appropriate to apply the test.

[105] As explained in Peter W Hogg, Patrick J Monahan & Wade K Wright, *Liability of the Crown*, 4th ed (Toronto: Carswell, 2011) [Hogg, *Crown's Liability*] at 461-62:

A government department (or ministry) is headed by a minister and staffed by Crown servants. It possesses the attributes of the Crown. But many other public bodies exist whose status or relationship to the Crown is much less clear. When Parliament or a Legislature creates a public corporation or an unincorporated agency or an office outside the departments of government, does the body so created possess the attributes of the Crown?

[footnote omitted]

[106] The commission argues that it is not a corporation and “not outside the departments of government.” Rather, it submits that it is part of the Department of Finance; that is, part of the executive branch of the Provincial Government. It maintains that it has no distinct legal personality, nor is it a separate entity from the Crown. As the Crown, it maintains that it is entitled to rely on section 49 of the *IA*. Therefore, there is no need to apply the control test to determine if it is a Crown agent.

[107] The appellants state that “[t]o ascertain whether a public body possesses the attributes of the Crown,” it must pass the control test. They state that the test is the same regardless of whether the entity is a part of government or a Crown agent. In support of their contention, they rely on the statement in Hogg, *Crown's Liability* that “it may be assumed that the same rules [i.e.,

the control test] are applicable to unincorporated public bodies and public officers as to public corporations” (at 462).

[108] However, it is important to note that a footnote in Hogg, *Crown’s Liability* states that, “[i]n the case of an unincorporated body, there may be an initial question as to whether it is a separate legal entity”¹ (at 462, n 2). In a subsequent footnote, it notes that the use of the term “Crown agent” in this context has been criticized (*ibid* at 462, n 4). For example, Hogg, *Crown’s Liability* points out that Australian professor Dr. Nicholas Seddon argues that the term is “misleading and confusing, because it is commonly used to describe government departments, which are not agents of the Crown, but *are* the Crown, and it distracts from the operative question, which is whether the entity can claim a Crown privilege or immunity” (*ibid*) (emphasis in original).

[109] Interestingly, in Peter W Hogg & Wade Wright, *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters, 2007) (loose-leaf updated 2024, release 2) at s 10:2, online: (WL Can) [Hogg, *Constitutional Law*], it is acknowledged that the use of the term Crown agent to describe a corporation that is entitled to Crown immunity is not optimal, stating:

In this context, the expression “agent of the Crown” is not a particularly happy one, because a public corporation will often perform legal acts, such as making contracts, holding property, suing and being sued, on its own behalf, rather than on behalf of the Crown. Nevertheless, the corporation will be regarded as an agent of the Crown in this context if it satisfies the common law test of control . . . or if it is expressly made an agent of the Crown The trouble is that none of the competing expressions captures

¹ Giving rise to an entire body of case law dedicated to whether various regulatory bodies, like securities commissions, are suable entities (see e.g., *Westlake v R*, 1971 CanLII 680 (ONSC), aff’d 1972 CanLII 515 (ONCA), aff’d 1973 CanLII 2492 (SCC), regarding the Ontario Securities Commission). However, those cases do not address the question of whether the entity is “the Crown”.

the idea any better: the phrase “servant of the Crown”, which is sometimes used, does not seem any more appropriate; and to describe a corporation as an “instrumentality of the Crown”, “emanation of the Crown”, or as “within the shield of the Crown”, is positively misleading, since it conveys the impression that the public corporation is part of the Crown itself, whereas in fact it is a separate legal person.

[footnotes omitted]

[110] I am of the view that, as it applies to the commission, the phrases “servant of the Crown” or “officer of the Crown” seem more apt.

[111] Historically, the control test has been applied to regulatory agencies, administrative tribunals and public corporations even if they are performing “‘governmental’ functions” (Hogg, *Crown’s Liability* at 13; see also at 12). However, most of the case law employing the control test focusses on public corporations, often engaged in commercial activities, rather than adjudicative bodies performing decision-making functions assigned to them by statute (see Hogg, *Constitutional Law*, s 10:13). Generally speaking, courts have applied the control test strictly in cases where a public body is trying to avoid liability, because of a long-standing animus towards the concept of Crown immunity in this context. As explained in Hogg, *Constitutional Law*, “the tendency of the decisions is against the finding of Crown-agent status. The reason, without doubt, is a justified reluctance on the part of the courts to extend a special privilege of the Crown any further than necessary” (at s 10:3).

[112] In my opinion, it is important to recognize the different policy considerations that come into play in cases, like the one at bar, where the Crown is acting in the public interest and the application of Crown immunity will enable it to fulfill its statutorily mandated purpose. As stated in Hogg,

Crown's Liability: “This book takes as its focus the extent to which the Crown, in the sense of the executive branch of government, is liable to . . . persons *injured by the exercise of government power*” (at 13) (emphasis added).

[113] Thus, there are good policy reasons for considering whether a regulatory or administrative body performing government functions is, in fact, part of the executive branch of government. I agree with the commission’s contention that it first must be determined whether the commission is part of government, as opposed to a separate legal entity to which the control test would apply.

[114] The above appears to be what Freedman JA found in *Hupe*, when he held that the appellant director in that case was an “official administering a legislative scheme” (at para 51) without reference to the control test.

[115] In my view, it is also what the panel found when it held that the commission is a “department, division or branch of the government” (italics omitted). In this regard, I disagree with the appellants that the panel found that section 49 of the *IA* applied by virtue of finding the commission to be an *agent of the Crown*. The panel found it was the Crown.

[116] I am unaware of any case where the courts have undertaken a comprehensive analysis of whether an entity is the Crown, as opposed to a separate entity to which the control test applies.

[117] In my view, in order to determine whether an entity is part of the Crown, resort must be had to the purposive approach to statutory interpretation enunciated in *Rizzo*. While control is a factor, consideration of other indicia of the intent of the Legislature should also be included in the

analysis. This involves looking at the legislation governing the entity (including the control exercised by the ministry over the entity), the treatment by the Legislature of the entity in other legislation, and the meaning given to the term “Crown” in jurisprudence other than that of Crown agency. In my view, the question here is, did the Legislature intend for the commission to be part of the government?

Is the Commission the Crown?

Definition of the Crown

[118] It is helpful to recall that “the term the Crown simply refers to the executive branch of government” (*Crown’s Liability* at 12; see also *Eldorado* at 562).

[119] As Hogg, *Crown’s Liability* at 12-13 elaborates:

[T]he term “the Crown” has persisted as the name for the executive branch of government. Executive power is actually exercised by the Prime Minister (or Premiers) and the other ministers who direct the work of the civil servants in the various government departments of Canada (and the provinces). This structure within the government of Canada (and of each province) is the executive branch. It is commonly and accurately described as “the government”, or “the administration”, or “the executive”, or even “the state”, but lawyers usually use the term “the Crown”.

[footnotes omitted]

The Structure of the Commission

[120] I start by noting that the commission is not a corporation and there is no provision in the *SA* indicating that it is an agent of the Crown. Rather, section 2(1) of the *SA* provides:

Commission continued

2(1) The Manitoba Securities Commission composed of not more than seven members appointed by the Lieutenant Governor in Council is continued.

Prorogation

2(1) Est prorogée la Commission des valeurs mobilières du Manitoba, composée d'au plus sept commissaires nommés par le lieutenant-gouverneur en conseil.

[121] Section 2(3) of the *SA* provides:

Administration of Act

2(3) The commission is responsible for the administration of this Act.

Application de la Loi

2(3) La Commission est chargée d'appliquer la présente loi.

[122] This contrasts with the structure of securities commissions in provinces wherein the securities commissions are corporations given Crown agency status. For example, section 2 of Ontario's *Securities Commission Act, 2021*, SO 2021, c 8, Sched 9, states that the Ontario Securities Commission is continued as a corporation. Section 3 of that legislation provides that it is an "agent of the Crown in right of Ontario." See also the *Crown Agency Act*, RSO 1990, c C48.

[123] Similarly, section 4 of the *BCSA* provides that the British Columbia Securities Commission is continued as a corporation. Section 5(1) provides that the commission "is an agent of the government." Also see, for example,

the *ABSA*, ss 11(2), 21(1); *The Financial and Consumer Affairs Authority of Saskatchewan Act*, SS 2012, c F-13.5, ss 3(2), 6(1); New Brunswick's *Financial and Consumer Services Commission Act*, SNB 2013, c 30, ss 3(1), 3(4).

[124] In Manitoba, the government has chosen not to give the commission corporate status. That is, it did not create a separate entity requiring a designation as a Crown agent.

[125] The appellants argue that section 142(1) of the *SA* evidences the intent of the Legislature to treat the Crown and the commission as separate entities. Section 142(1) of the *SA* provides:

Protection from liability

142(1) No person may commence or maintain an action or other proceeding against the Crown, the commission, the Director or another person mentioned in subsection (1.1), for any act done in good faith, or any neglect or default, in the performance or intended performance in good faith of a responsibility or in the exercise or intended exercise in good faith of a power or discretion

(a) under this Act or the regulations; or

(b) under any other Act of the Legislature or other regulations under which the commission or the

Immunité

142(1) La Couronne, la Commission, le directeur et les autres personnes visées au paragraphe (1.1) bénéficient de l'immunité pour les actes accomplis ou les omissions ou manquements commis, de bonne foi, dans l'exercice effectif ou censé tel des attributions qui leur sont conférées en vertu :

a) de la présente loi ou des règlements;

b) de toute autre loi de la Législature ou d'autres règlements en vertu desquels des attributions sont conférées à la Commission ou au directeur.

Director has
responsibilities, powers or
discretion.

[126] I am not persuaded that this provision evidences that the Legislature intended that the commission be a separate entity. This section addresses Crown liability and clarifies the intent that all listed parties be treated the same. It could be interpreted as the Crown clarifying its intent that the commission is part of the Crown or executive branch, as opposed to a separate entity.

The Special Operating Agencies Act

[127] The commission argues, and I agree, that legislative intent evidencing that the commission is part of the government is demonstrated by the designation of the commission as a special operating agency pursuant to *The Special Operating Agencies Act*, CCSM c S 185 [the *SOAA*].

[128] Section 11(1)(a) of the *SOAA* (originally enacted as *The Special Operating Agencies Financing Authority Act*, SM 1992, c 54) provides:

**Designation of special
operating agencies**

11(1) The Lieutenant Governor in Council may, on the recommendation of the Minister of Finance and the minister responsible for the administration of any department, division, branch or program of the government,

(a) by regulation, designate the department, division,

**Désignation d'organismes de
service spécial**

11(1) Le lieutenant-gouverneur en conseil peut, sur recommandation du ministre des Finances et du ministre responsable d'un ministère, d'une division ou d'une direction du gouvernement :

a) désigner, par règlement, le ministère, la division ou

branch or program as a special operating agency for the purposes of this Act;

la direction à titre d'organisme de service spécial pour l'application de la présente loi;

[129] Pursuant to the current *Regulation*, the commission is designated as a “special operating [agency]” (at s 1). Specifically, section 1 states:

Designation of SOA

1 The *departments, divisions, branches and programs of the government* set out in Column 2 of the Schedule are designated as special operating agencies for the purposes of *The Special Operating Agencies Act*, operating under the names set out opposite them in Column 1 of the Schedule.

Désignation d'OSS

1 Les *ministères, les divisions, les directions et les programmes du gouvernement* qui sont prévus à la colonne 2 de l'annexe du présent règlement sont désignés à titre d'organismes de service spécial pour l'application de la Loi sur les organismes de service spécial et sont exploités sous les noms correspondants établis dans la colonne 1 de l'annexe

[emphasis added]

Both the commission and the Financial Institutions Regulation Branch of the Department of Finance are listed in Column 2. Column 1 identifies them as the “Manitoba Financial Services Agency” (the MFSA).

[130] A review of the legislative history of the *SOAA* reveals that the government described the legislation as having two primary purposes. At the second reading of the *SOAA* (see “Bill 96, The Special Operating Agencies Financing Authority Act”, 2nd reading, Manitoba, Legislative Assembly, *Debates and Proceedings*, 35-3, vol 41, No 87A (16 June 1992) at 4743-44)

(Hon Clayton Manness) online: <gov.mb.ca/legislature/hansard/hansard.htm
l>), the Minister of Finance stated:

The bill has two primary purposes. The first is to enable the designation of *certain areas of government* as special operating agencies. *SOAs are service operations within departments*, granted more direct responsibility for results and increased management flexibility needed to reach new levels of performance.

They will improve the delivery of services by, one, ensuring that operations are clearly defined and well understood; two, setting demanding performance goals and developing strategies for attaining them; three, applying and adapting the best private and public-sector management practices; and fourth, monitoring performance to ensure continuous progress toward goals. The aim of SOAs or special operating agencies is to give greater authority and scope to managers and employees to encourage initiative and improve service delivery performance.

...

The second purpose of this bill is to establish the SOA financing authority as a mechanism for funding the operation of SOAs under the direction of the Minister of Finance and with the support of Finance staff to manage overall financial arrangements. The financing authority will fund the activities of SOAs as approved by Lieutenant-Governor-in-Council. An operating charter, business plan and management agreement with the minister responsible will be developed for each SOA.

...

The financing authority will also be required to report on its overall financial operations to the Legislature. The financing mechanism is not a replacement for the present way of accounting for government operations within the consolidated fund. It is intended as an alternative for consideration by those areas of government which would benefit from more efficient commercial operations as business enterprises within government.

[emphasis added]

[131] The *SOAA* has not received much judicial consideration. In *R v Kupfer*, 2007 MBPC 64, aff'd 2008 MBQB 203, a case involving *The Legislative Assembly and Executive Council Conflict of Interest Act*, CCSM c L112, Garfinkel J noted, that “Land Management Services is a special entity within Government operating as a special operating agency within the Department of Government Services, but independent of the Accommodation Division” (at para 12). This supports the view that special operating agencies may be viewed as special entities within government.

[132] Finally, before leaving the area of financial administration, I would note that the commission also points out that the MFSA is identified as part of the Department of Finance in the Provincial Government’s key annual budget detail document (see Manitoba, Minister of Finance, *2023 Manitoba Estimates of Expenditure*, report, online (pdf): <gov.mb.ca/asset_library/en/budget2023/estimates-expenditures-budget2023.pdf>). Prior to being organized under the MFSA, the commission itself was designated as a special operating agency (see the *Regulation*).

The Executive Government Organization Act, The Public Service Act and Other Provincial Legislation

[133] *The Executive Government Organization Act*, CCSM c E170 [the *EGOA*] provides that the Minister of Finance is charged with the administration of the *SA* by the Lieutenant Governor in Council (see s 5(1); OIC 352/2023). The commission’s staff are within the Public Service Commission pursuant to section 11(1) of the *EGOA*, which defines “staff” as follows:

Staff

11(1) Such officers and employees, including deputies for the several ministers, as are required to perform the duties and functions of the several departments and agencies of the government that are not corporate entities may be employed in accordance with *The Public Service Act*.

Personnel

11(1) Les cadres et employés, y compris les sous-ministres, nécessaires à l'exercice des fonctions des divers ministères et organismes du gouvernement qui ne sont pas dotés de la personnalité juridique peuvent être employés en conformité avec la *Loi sur la fonction publique*.

[134] The Deputy Minister of Finance is responsible for managing the commission's workforce pursuant to section 27(1) of *The Public Service Act*, CCSM c P271 [the *PSA*], which states, in part:

Deputy minister responsible for department's workforce management

27(1) Each deputy minister is responsible for managing their department's workforce in accordance with this Act, the code of conduct, the plans and the workforce management policies.

Responsabilités des sous-ministres

27(1) Le sous-ministre est chargé de gérer la main-d'œuvre de son ministère en conformité avec la présente loi, le code de conduite, les plans et les politiques de gestion de la main-d'œuvre.

[135] In addition, the commission falls within the definition of a government agency in other provincial statutes (see e.g. the *FIPPA*, s 1(1); *The Financial Administration Act*, CCSM c F55, s 1 [the *FAA*]).

Other Jurisprudence: The Crown and Public Interest

[136] As earlier indicated, I am of the view that different policy considerations are engaged when interpreting legislation where the Crown is

acting in the public interest. In such cases, a broader interpretation of section 49 of the *IA* supports the legislative intent.

[137] For example, in *Canada (Attorney General) v Thouin*, 2017 SCC 46 [Thouin], the issue was whether the *CLPA* applied to the obligation to submit to discovery proceedings regarding a chief investigator from the federal government's Competition Bureau in proceedings where neither the Crown nor the chief investigator was a party.

[138] The Supreme Court concluded that provincial discovery rules do not apply to the Crown in proceedings in which it is not a party. The chief investigator was protected by the Crown's immunity pursuant to section 17 of the *Interpretation Act*, RSC 1985, c I-21 (see *Thouin* at paras 3, 40, 43), which is similar to section 49 of the *IA*.

[139] There was no discussion in the case about whether or not the Competition Bureau was "the Crown" or was an agent of the Crown. Instead, the Court of Appeal in *Canada (Attorney General) v Thouin*, 2015 QCCA 2159 at para 19, stated:

It is well known that, in Canada, the principle of equality of citizens suffers exceptions where the rights and responsibilities of the federal Crown are at stake. These exceptions confer on the Crown and its servants privileges and immunities exempting them from the application of the laws to which all citizens are normally subject. The rules governing these exceptions are of customary origin. They date from the time when the Sovereign was the source of all rights. *They were aimed at maintaining for the State, in the form of prerogatives, the rights enjoyed by sovereigns in order to enable its administrative bodies to accomplish their public interest mission.* Over time, these customary rules or prerogatives were recognized and defined by the courts to become common law rules in English and Canadian law.

[emphasis added; footnote omitted]

[140] In other contexts, the Supreme Court has given a broad meaning to the term the Crown. When it comes to constitutional principles, the Crown is given an expansive meaning. For example, in *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 at para 29, the unanimous Supreme Court made the following comments regarding the National Energy Board, in the context of the duty to consult:

[T]he NEB is not, strictly speaking, “the Crown”. Nor is it, strictly speaking, an agent of the Crown, since — as the NEB operates independently of the Crown’s ministers — no relationship of control exists between them (Hogg, Monahan and Wright, at p. 465). As a statutory body holding responsibility under s. 5(1)(b) of *COGOA*, however, the NEB acts on behalf of the Crown when making a final decision on a project application. Put plainly, once it is accepted that a regulatory agency exists to exercise executive power as authorized by legislatures, any distinction between its actions and Crown action quickly falls away. In this context, the NEB is the vehicle through which the Crown acts. Hence this Court’s interchangeable references in *Carrier Sekani Tribal Council* to “government action” and “Crown conduct” (paras. 42-44). It therefore does not matter whether the final decision maker on a resource project is Cabinet or the NEB. In either case, the decision constitutes Crown action that may trigger the duty to consult. . . . The action of the NEB, taken in furtherance of its statutory powers under s. 5(1)(b) of *COGOA* to make final decisions respecting such testing as was proposed here, clearly constitutes Crown action.

[141] In this way, statutory decision makers are considered to be “the Crown” in the duty to consult context. See also *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2021 ABCA 342 at para 96, Feehan JA, concurring; *Nova Scotia (Attorney General) v Nova Scotia (Utility and Review Board)*, 2019 NSCA 66 at paras 119, 123.

[142] A similarly broad definition is given to the scope of the application of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the *Charter*]. As La Forest J explained in *Godbout v Longueuil (City)*, 1997 CanLII 335 at para 51 (SCC):

[M]unicipalities derive their existence and law-making authority from the provinces; that is, they exercise powers conferred on them by provincial legislatures, powers and functions which they would otherwise have to perform themselves. Since the *Canadian Charter* clearly applies to the provincial legislatures and governments, it must, in my view, also apply to entities upon which they confer governmental powers within their authority.

[143] More recently, the Supreme Court has confirmed the *Charter*'s application in areas (like public education) that involve “inherently a governmental function” (*York Region District School Board v Elementary Teachers' Federation of Ontario*, 2024 SCC 22 at para 81).

[144] In my view, an argument could be made for a narrow definition of the Crown in connection with *The Proceedings Against the Crown Act*, CCSM c P140 and the *CLPA* to level the playing field for private litigants in that context. However, based on the above, the same policy rationale does not extend to cases, like this one, where a regulatory body is exercising executive powers (delegated to it by the provincial Crown) in the public interest.

Crown Agency

[145] Having determined that the commission is part of the Crown, I need not determine the issue of whether it is a Crown agent, although I would note that, as earlier indicated, it fits within the legislated definition of a “government agency” (the *FAA*, s 1; *FIPPA*, s 1(1)).

[146] Despite the above, I acknowledge that this Court has previously applied the control test in the determination of whether an administrative tribunal is a Crown agent. In this case, both parties argued that *Christie* supported their respective positions.

[147] In *Christie*, the applicant Manitoba (the expropriator) applied to the Court for *certiorari* regarding an expropriation decision of the LVAC. The issue was whether the LVAC was a Crown agent and therefore immune from prerogative relief. Applying the control test, the Court found that the LVAC was not a Crown agent.

[148] It was not argued, and the Court did not consider, whether the LVAC was a part of the Crown, as opposed to an agent of the Crown.

[149] More fundamentally, there was no right of appeal in *Christie*, as there is in the case at bar. The ruling of the Court in that case ensured that the decision of LVAC was reviewable. In my view, this distinguishes *Christie* and limits its application to the unusual world of prerogative remedies in cases where no statutory right of appeal is available.

[150] Based on the above, I am of the view that the application of the control test is unnecessary, and I would decline to apply it in this case.

Conclusion and Decision

[151] The *SA* constitutes protective legislation. A purposive interpretation of the *LAA* and the *SA* leads to the conclusion that the Legislature never intended that the *LAA* was to apply to proceedings under the *SA*.

[152] Alternatively, the commission is a part of the Crown and is not subject to the *LAA* pursuant to section 49 of the *IA*.


[153] In the result, I would dismiss the appeals with costs to the commission.

 _____ JA

I agree:

 _____ JA

I agree:

 _____ JA

APPENDIX

Pertinent provisions of *The Securities Act*, CCSM, c S50:

Liability for non-disclosure

113(1) Every person or company in a special relationship with a reporting or other issuer who purchases or sells securities of the reporting or other issuer with knowledge of a material fact or material change with respect to the reporting or other issuer that has not been generally disclosed is liable to compensate the seller or purchaser of the securities for damages as a result of the trade unless the person or company in the special relationship with the reporting or other issuer proves that

(a) the person or company reasonably believed that the material fact or material change had been generally disclosed; or

(b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser.

Responsabilité en cas de non-divulgarion

113(1) Toute personne ou compagnie ayant des relations particulières avec un émetteur assujetti ou autre et qui achète ou vend des valeurs mobilières de celui-ci en connaissant un fait important ou un changement important concernant l'émetteur assujetti ou autre qui n'a pas fait l'objet d'une divulgation générale est tenue d'indemniser le vendeur ou l'acheteur des valeurs mobilières pour les dommages qui découlent de l'opération à moins que la personne ou compagnie ayant des relations particulières avec l'émetteur assujetti ou autre ne prouve, selon le cas :

a) qu'elle avait des motifs valables de croire que le fait important ou le changement important avait fait l'objet d'une divulgation générale;

b) que le vendeur ou l'acheteur connaissait ou aurait dû normalement connaître le fait important ou le changement important.

Liability for tipping

113(2) Except as provided in subsection (2.1), every person or company

(a) that is a reporting or other issuer;

(b) that is a person or company in a special relationship with a reporting or other issuer; or

(c) that proposes

(i) to make a take-over bid, as defined in Part IX, for the securities of a reporting or other issuer,

(ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting or other issuer, or

(iii) to acquire a substantial portion of the property of a reporting or other issuer;

and that informs another person or company of a material fact or material change with respect to the reporting or other issuer that has not been generally disclosed is liable to compensate for damages any person or company that

Responsabilité pour divulgation interdite

113(2) Sous réserve du paragraphe (2.1), chaque personne ou compagnie qui, selon le cas :

a) est un émetteur assujetti ou autre;

b) a des relations particulières avec un émetteur assujetti ou autre;

c) envisage :

(i) de faire une offre publique d'achat, au sens de la partie IX, à l'égard des valeurs mobilières d'un émetteur assujetti ou autre,

(ii) de devenir partie à une réorganisation, à une fusion, à un arrangement ou à une combinaison similaire d'entreprises avec un émetteur assujetti ou autre,

(iii) d'acquérir une partie importante des biens d'un émetteur assujetti ou autre,

et qui informe une autre personne ou compagnie d'un fait important ou d'un changement important concernant l'émetteur assujetti ou autre qui n'a pas fait l'objet d'une divulgation générale est

thereafter sells securities of that issuer to or purchases securities of that issuer from the person or company that received the information.

tenue d'indemniser pour les dommages subis toute personne ou compagnie qui par la suite vend des valeurs mobilières de cet émetteur à la personne ou à la compagnie qui a été informée ou achète des valeurs mobilières du même émetteur à cette personne ou compagnie.

Liability for using inside information about mutual funds or managed portfolios

113(3) A person or company that

(a) has access to information concerning the investment program of a mutual fund in Manitoba or the investment portfolio managed for a client by a dealer or adviser; and

(b) uses that information for the person's or company's direct benefit or advantage to purchase or sell, for the person's or company's account, securities of a reporting or other issuer whose securities are included in the mutual fund's security portfolio or the investment portfolio managed by the dealer or adviser;

is accountable to the mutual fund or the client of the dealer or adviser for any benefit or advantage received or

Responsabilité pour utilisation de renseignements privilégiés

113(3) Toute personne ou compagnie qui a accès à des renseignements concernant le programme de placement d'un fonds mutuel au Manitoba ou le portefeuille de placement qu'un courtier ou un conseiller gère pour le compte d'un client et qui utilise ces renseignements à son profit ou à son avantage direct afin d'acheter ou de vendre, pour son compte, des valeurs mobilières d'un émetteur assujetti ou autre lorsque le portefeuille de valeurs mobilières du fonds mutuel ou le portefeuille de placement que le courtier ou le conseiller gère comprend des valeurs mobilières de cet émetteur assujetti ou autre est comptable envers le fonds mutuel ou le client du courtier ou du conseiller à l'égard de tout profit ou avantage reçu ou recevable par suite de cet achat ou de cette vente.

receivable as a result of such purchase or sale.

Accountability for benefit or advantage

113(4) A person or company that is an insider, affiliate or an associate of a reporting or other issuer that

(a) sells or purchases the securities of the reporting or other issuer with knowledge of a material fact or material change with respect to the reporting or other issuer that has not been generally disclosed; or

(b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting or other issuer that has not been generally disclosed;

is accountable to the reporting or other issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

Obligation de rendre compte des profits ou avantages

113(4) Toute personne ou compagnie qui est l'initié d'un émetteur assujetti ou autre et qui, selon le cas :

a) vend ou achète les valeurs mobilières de l'émetteur assujetti ou autre en ayant connaissance d'un fait important ou d'un changement important concernant l'émetteur assujetti ou autre qui n'a pas fait l'objet d'une divulgation générale;

b) communique à une autre personne, autrement que dans le cours nécessaire des affaires, un fait important ou un changement important concernant l'émetteur assujetti ou autre qui n'a pas fait l'objet d'une divulgation générale,

est comptable envers l'émetteur assujetti ou autre de tout profit ou avantage reçu ou recevable par la personne ou la compagnie par suite de l'achat, de la vente ou de la communication, à moins que la personne ou la compagnie ne prouve qu'elle avait des motifs valables de croire que le fait important ou le changement important avait fait l'objet

d'une divulgation générale.
L'obligation prévue au présent
paragraphe incombe
également à la personne ou à la
compagnie qui appartient au
groupe d'un tel émetteur ou
qui a des liens avec lui.

Order to commence action for accounting

114(1) A person or company may apply to the Court of King's Bench for an order requiring the commission to commence or continue an action in the name and on behalf of the reporting or other issuer to enforce the liability created by subsection 113(4) if the person or company

(a) was at the time of the sale, purchase or communication referred to in that subsection; or

(b) is at the time of the application;

an owner of securities of the reporting or other issuer.

Grounds for making order

114(2) The court may make the order on such terms as to security for costs or otherwise as it considers appropriate, but only if it is satisfied that the person or company has reasonable grounds for believing that the reporting or other issuer has a cause of

Ordonnance

114(1) Une personne ou une compagnie peut présenter une requête à la Cour du Banc du Roi afin d'obtenir une ordonnance enjoignant à la Commission d'intenter ou de poursuivre une action au nom et pour le compte de l'émetteur assujetti ou autre afin de faire exécuter l'obligation créée par le paragraphe 113(4) si la personne ou la compagnie en question était, au moment de l'achat, de la vente ou de la communication mentionné à ce paragraphe, ou est, au moment de la requête, propriétaire des valeurs mobilières de l'émetteur assujetti ou autre.

Motifs

114(2) La Cour peut rendre l'ordonnance selon les modalités qu'elle estime appropriées, notamment quant à la garantie des dépens, seulement si elle est convaincue que la personne ou la compagnie a des motifs raisonnables de croire que l'émetteur assujetti ou autre a,

action under subsection 113(4) and that

(a) the reporting or other issuer has refused or failed to commence an action under that subsection within 60 days after receiving a written request from the person or company to commence the action; or

(b) the reporting or other issuer has failed to prosecute diligently an action commenced by it under that subsection.

Notice to issuer and commission

114(3) The reporting or other issuer and the commission

(a) must be given notice of an application under subsection (1); and

(b) are parties to the application and may appear and be heard on it.

Order requiring issuer to co-operate

114(4) An order made under this section must require the reporting or other issuer to

(a) co-operate fully with the commission in instituting or prosecuting the action; and

(b) make available to the commission all books, records,

en vertu du paragraphe 113(4), une cause d'action et que, selon le cas :

a) l'émetteur assujetti ou autre a refusé ou omis d'intenter une action visée à ce paragraphe dans les 60 jours qui ont suivi la réception d'une demande écrite de la personne ou de la compagnie à cette fin;

b) l'émetteur assujetti ou autre a omis d'agir avec diligence dans l'action qu'il a intentée en vertu de ce paragraphe.

Avis à l'émetteur et à la Commission

114(3) L'émetteur assujetti ou autre et la Commission doivent recevoir avis de la requête visée au paragraphe (1); ils sont également parties à cette requête et peuvent comparaître et être entendus à ce sujet.

Contenu de l'ordonnance

114(4) L'ordonnance rendue en application du présent article enjoint à l'émetteur assujetti ou autre :

a) de collaborer entièrement avec la Commission relativement à l'introduction et la poursuite de l'action;

documents and other material or information relevant to the action known to or reasonably ascertainable by the reporting or other issuer.

Statutory rights — damages re misrepresentation in prospectus

141(1) If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the distribution period is deemed to have relied on the misrepresentation and has a right of action for damages against

(a) the issuer or a selling security holder on whose behalf the distribution is made;

(b) each underwriter of the securities that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made;

(c) every director of the issuer at the time the prospectus was filed;

(d) every person or company whose consent to disclosure of information in the prospectus has been filed, but only with respect

b) de mettre à la disposition de la Commission tous les livres, registres, documents et autres pièces ou renseignements qui ont trait à l'action et dont il a connaissance ou qu'il peut raisonnablement vérifier

Domages-intérêts

141(1) Si un prospectus contient une information fausse et trompeuse, l'acheteur qui a acheté les valeurs mobilières offertes pendant la période de placement est réputé s'être fondé sur cette information et a des droits d'action en dommages-intérêts contre :

a) l'émetteur ou un détenteur de valeurs mobilières vendeur pour qui le placement est fait;

b) chaque preneur ferme des valeurs mobilières qui a conclu un contrat avec l'émetteur ou le détenteur de valeurs mobilières vendeur pour qui le placement est fait;

c) les administrateurs de l'émetteur au moment du dépôt du prospectus;

d) les personnes ou les compagnies qui ont déposé leur consentement à la communication de renseignements dans le prospectus, mais

to reports, opinions or statements that have been made by them; and

(e) every person or company, other than the ones referred to in clauses (a) to (d), who signed the prospectus.

uniquement en ce qui a trait aux rapports, aux opinions ou aux déclarations provenant d'elles;

e) les personnes ou les compagnies, autres que celles visées aux alinéas a) à d), qui ont signé le prospectus.

Statutory rights — rescission re misrepresentation in prospectus

141(2) If a prospectus contains a misrepresentation, a purchaser who purchases a security offered by it during the distribution period is deemed to have relied on the misrepresentation and has a right of action for rescission against

(a) the issuer or a selling security holder on whose behalf the distribution is made; and

(b) any underwriter of the securities.

Rescission

141(2) Si un prospectus contient une information fausse et trompeuse, l'acheteur qui a acheté les valeurs mobilières offertes pendant la période de placement est réputé s'être fondé sur cette information et a des droits d'action en rescision contre :

a) l'émetteur ou le détenteur de valeurs mobilières vendeur pour qui le placement est fait;

b) tout preneur ferme des valeurs mobilières.

No action for damages if rescission

141(3) If the purchaser chooses to exercise a right of action for rescission against a person or company, the purchaser has no right of action for damages against that person or company.

Choix de l'acheteur

141(3) S'il choisit d'exercer son droit d'action en rescision contre une personne ou une compagnie, l'acheteur perd son droit d'action en dommages-intérêts contre cette personne ou cette compagnie.

Defence when securities purchased with knowledge

141(4) No person or company is liable under subsection (1) or (2) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

Other defences

141(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) or (2) if the person or company proves

(a) that the prospectus was filed without the person's or company's knowledge or consent and that, after becoming aware that it was filed, the person or company promptly gave reasonable general notice that it was filed;

(b) that, between the issuance of a receipt for the prospectus and the purchaser's purchase of the securities, and after becoming aware of any misrepresentation in the prospectus, the person or company

(i) withdrew the person's or company's consent to the prospectus, and

(ii) gave reasonable general notice of the

Moyen de défense

141(4) Une personne ou une compagnie n'engage pas sa responsabilité au titre du paragraphe (1) ou (2) si elle prouve que l'acheteur savait que l'information était fausse et trompeuse.

Autres moyens de défense

141(5) Une personne ou une compagnie, à l'exception de l'émetteur ou du détenteur de valeurs mobilières vendeur, n'engage pas sa responsabilité au titre du paragraphe (1) ou (2) dans les cas suivants :

a) elle prouve que le prospectus a été déposé à son insu ou sans son consentement et que, dès qu'elle a été informée du dépôt, elle a donné un avis général raisonnable de ce dépôt;

b) elle prouve que, entre le moment de la délivrance du visa et celui de l'achat des valeurs mobilières et après avoir été informée du fait que le prospectus contenait une information fausse et trompeuse, elle a retiré son consentement au prospectus et donné un avis général raisonnable de ce retrait ainsi que des motifs qui le justifient;

withdrawal and the reason for it;

(c) that, with respect to any part of the prospectus purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion or statement, the person or company did not have any reasonable grounds to believe and did not believe that

(i) there had been a misrepresentation, or

(ii) the relevant part of the prospectus

(A) did not fairly represent the report, opinion or statement of the expert, or

(B) was not a fair copy of, or an extract from, the expert's report, opinion or statement;

(d) that, with respect to any part of the prospectus purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of, or an extract from, the person's or company's own report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to

c) à l'égard de la partie du prospectus apparemment fondée sur l'opinion d'un expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration d'un expert, elle prouve qu'elle n'avait aucun motif raisonnable de croire et ne croyait véritablement pas :

(i) soit qu'il y avait une information fausse et trompeuse,

(ii) soit que la partie en cause du prospectus ne présentait pas fidèlement le rapport, l'avis ou la déclaration de l'expert, ou n'en constituait pas une copie ou un extrait fidèle;

d) à l'égard de la partie du prospectus apparemment fondée sur sa propre opinion en sa qualité d'expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration provenant d'elle en sa qualité d'expert, mais qui contient une information fausse et trompeuse du fait qu'elle ne présente pas fidèlement le rapport, l'avis ou la déclaration :

(i) elle prouve qu'elle avait des motifs raisonnables de croire et qu'elle croyait

represent fairly the person's or company's report, opinion or statement as an expert,

(i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus fairly represented the person's or company's report, opinion or statement, or

(ii) after becoming aware that the part of the prospectus did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Director and gave reasonable general notice that misuse had been made of it and that the person or company would not be responsible for that part of the prospectus; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or an extract from, a public official document

(i) it was a correct and fair representation of the statement or copy of, or

véritablement que, après une enquête raisonnable, la partie du prospectus en cause donnait une présentation fidèle,

(ii) elle prouve qu'elle a informé le directeur et donné un avis général raisonnable de l'utilisation abusive et du fait qu'elle n'assumait aucune responsabilité à l'égard de cette partie du prospectus, dès qu'elle a appris que la présentation n'était pas fidèle;

e) elle prouve, à l'égard d'une déclaration fausse présentée comme étant une déclaration d'un représentant officiel ou contenue dans un document présenté comme étant une copie ou un extrait d'un document officiel public, que cette déclaration donnait une présentation juste et exacte de la déclaration ou de la copie ou de l'extrait du document et qu'elle avait des motifs raisonnables de croire et croyait véritablement que cette déclaration était vraie.

extract from, the
document, and

(ii) the person or company
had reasonable grounds to
believe and did believe
that the statement was
true.

**When expert not liable for
own report**

141(6) No person or company,
other than the issuer or selling
security holder, is liable under
subsection (1) or (2) with
respect to any part of the
prospectus purporting to be
made on the person's or
company's own authority as an
expert or purporting to be a
copy of, or an extract from, the
person's or company's own
report, opinion or statement as
an expert unless the person or
company

(a) did not conduct an
investigation sufficient to
provide reasonable grounds
for a belief that there had
been no misrepresentation;
or

(b) believed there had been
a misrepresentation.

**When others not liable for
expert's report**

141(7) No person or company,
other than the issuer or selling
security holder, is liable under
subsection (1) or (2) with
respect to any part of the

Responsabilité de l'expert

141(6) Une personne ou une
compagnie, à l'exception de
l'émetteur ou du détenteur de
valeurs mobilières vendeur,
n'engage pas sa responsabilité
au titre du paragraphe (1) ou
(2) à l'égard de la partie du
prospectus apparemment
fondée sur sa propre opinion
en sa qualité d'expert ou
présentée comme étant une
copie ou un extrait d'un
rapport, d'un avis ou d'une
déclaration provenant d'elle en
sa qualité d'expert, sauf si elle
n'a pas fait d'enquête
suffisante pour lui permettre
d'avoir des motifs
raisonnables de croire
qu'aucune information fausse
et trompeuse n'était
communiquée ou sauf si elle
croyait que la partie en cause
contenait une information
fausse et trompeuse.

**Responsabilité d'autres
parties**

141(7) Une personne ou une
compagnie, à l'exception de
l'émetteur ou du détenteur de
valeurs mobilières vendeur,
n'engage pas sa responsabilité

prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, an expert's report, opinion or statement, unless the person or company

(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

Limit on amount recoverable

141(8) The amount recoverable under this section shall not exceed the price at which the securities were offered to the public.

Limit on amount recoverable from underwriter

141(9) An underwriter is not liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter.

Limit on particular defendant's liability

141(10) In an action for damages under subsection (1),

au titre du paragraphe (1) ou (2) à l'égard de toute partie du prospectus qui n'est pas apparemment fondée sur l'opinion d'un expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration d'un expert, sauf si elle n'a pas fait d'enquête suffisante pour lui permettre d'avoir des motifs raisonnables de croire qu'aucune information fausse et trompeuse n'était communiquée ou sauf si elle croyait que la partie en cause contenait une information fausse et trompeuse.

Limite

141(8) Les sommes recouvrables au titre du présent article ne peuvent être supérieures au prix auquel les valeurs mobilières étaient offertes au public.

Limite applicable au preneur ferme

141(9) La responsabilité maximale qu'assume le preneur ferme correspond, à l'égard de la portion du placement qu'il prend ferme, au prix total auquel les valeurs mobilières sont offertes au public.

Limitation des dommages-intérêts

141(10) Dans l'action en dommages-intérêts visée au

the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

Joint and severable liability

141(11) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.

Rights when no receipt issued for prospectus

141(12) If in a distribution of securities

- (a) no receipt for a prospectus was issued;
- (b) no exemption exists or was given exempting the filing of a prospectus; and
- (c) a misrepresentation existed in respect of the distribution;

each purchaser of the securities has a right of rescission and a right of action for damages as if a prospectus containing the misrepresentation had been filed in respect of the distribution.

paragraphe (1), le défendeur n'est pas tenu de payer les dommages-intérêts demandés lorsqu'il démontre que la dépréciation des valeurs mobilières ne découle pas de l'information fausse et trompeuse

Responsabilité conjointe et individuelle

141(11) Les personnes et compagnies visées au paragraphe (1) qui sont déclarées responsables ou qui reconnaissent leur responsabilité sont responsables conjointement et individuellement.

Non-délivrance d'un visa

141(12) Les acheteurs de valeurs mobilières ont des droits d'action en rescission et en dommages-intérêts comme si un prospectus contenant une information fausse et trompeuse avait été déposé à l'égard du placement si, au moment de ce placement :

- a) aucun visa n'avait été délivré à l'égard d'un prospectus;
- b) aucune exemption n'était prévue ni n'avait été accordée en ce qui a trait au dépôt d'un prospectus ;
- c) une information fausse et trompeuse avait été communiquée à son égard.

Defendant may recover contribution

141(13) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company that is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

Rights are in addition to other rights

141(14) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right that the purchaser may have at law.

Deemed misrepresentation

141(15) If a misrepresentation is contained in a record that is incorporated by reference in, or that is deemed to be incorporated by reference into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.

Statutory rights — offering memorandum

141.1(1) When an offering memorandum contains a misrepresentation, a purchaser

Recouvrement auprès des codéfendeurs

141(13) Le défendeur tenu de payer des dommages-intérêts peut en recouvrer la totalité ou une partie auprès de toute autre personne ou compagnie responsable conjointement et individuellement sous le régime du présent article du versement des mêmes dommages-intérêts dans la même cause d'action, sauf si le tribunal estime, compte tenu des circonstances, qu'il ne serait pas juste et équitable de permettre le recouvrement.

Caractère supplétif

141(14) Les droits d'action en rescision et en dommages-intérêts que prévoit le présent article s'ajoutent aux recours dont l'acheteur peut bénéficier en droit et ne leur portent nullement atteinte.

Présomption

141(15) L'information fausse et trompeuse qui se trouve dans un document incorporé par renvoi — ou réputé incorporé par renvoi — dans le prospectus est présumée se trouver dans le prospectus lui-même.

Droits de l'acheteur — notices d'offre

141.1(1) Si une notice d'offre comporte une information fausse et trompeuse, l'acheteur

who purchases a security offered by the offering memorandum is deemed to have relied on the representation if it was a misrepresentation at the time of purchase and has

(a) a right of action for damages against

(i) the issuer,

(ii) every director of the issuer at the date of the offering memorandum, and

(iii) every person or company who signed the offering memorandum; and

(b) a right of rescission against the issuer.

No action for damages if rescission

141.1(2) If the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages against a person or company referred to in clause (1)(a).

Defences

141.1(3) Subject to subsection (4), when a misrepresentation is contained in an offering memorandum, no person or company is liable under subsection (1)

des valeurs mobilières offertes par la notice est réputé s'être fié à l'information si elle était fausse et trompeuse au moment de l'achat et a :

a) un droit d'action en dommages-intérêts contre :

(i) l'émetteur,

(ii) chaque administrateur de l'émetteur à la date de la notice d'offre,

(iii) chaque personne ou compagnie qui a signé la notice d'offre;

b) un droit d'action en rescision contre l'émetteur.

Choix de l'acheteur

141.1(2) S'il choisit d'exercer son droit de rescision, l'acheteur perd son droit d'action en dommages-intérêts.

Moyens de défense

141.1(3) Sous réserve du paragraphe (4), une personne ou une compagnie n'engage pas sa responsabilité au titre du paragraphe (1) dans les cas suivants :

- (a) if the person or company proves that the purchaser had knowledge of the misrepresentation;
- (b) if the person or company proves
 - (i) that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent, and
 - (ii) that, after becoming aware that it was sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the person's or company's knowledge and consent;
- (c) if the person or company proves that, after becoming aware of the misrepresentation, the person or company withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;
- (d) if, with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion or
 - a) elle prouve que l'acheteur était au courant de l'information fausse et trompeuse;
 - b) elle prouve que la notice a été envoyée à l'acheteur à son insu ou sans son consentement et que, dès qu'elle a été informée de l'envoi, elle a rapidement donné un avis raisonnable à l'émetteur du fait que la notice avait été envoyée à son insu ou sans son consentement;
 - c) elle prouve que, dès qu'elle a été informée de la présence de l'information fausse et trompeuse dans la notice, elle a retiré son consentement et en a donné un avis raisonnable et motivé à l'émetteur;
 - d) si, à l'égard de la partie de la notice apparemment fondée sur l'opinion d'un expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration d'un expert, elle prouve qu'elle n'avait aucun motif raisonnable de croire et ne croyait véritablement pas :
 - (i) soit qu'il y avait une information fausse et trompeuse,

statement, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that

(i) there had been a misrepresentation, or

(ii) the relevant part of the offering memorandum

(A) did not fairly represent the expert's report, opinion or statement, or

(B) was not a fair copy of, or an extract from, the expert's report, opinion or statement; or

(e) with respect to any part of the offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, an expert's report, opinion or statement, unless the person or company

(i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation, or

(ii) believed there had been a misrepresentation.

(ii) soit que la partie de la notice ne présentait pas fidèlement le rapport, l'avis ou la déclaration de l'expert, ou n'en constituait pas une copie ou un extrait fidèle;

e) à l'égard des autres parties de la notice que celle visée à l'alinéa d), sauf si elle n'a pas fait d'enquête raisonnable suffisante pour lui permettre d'avoir des motifs raisonnables de croire que la notice ne contenait pas d'information fausse et trompeuse ou croyait qu'elle contenait une information fausse et trompeuse.

Exception

141.1(4) Clauses (3)(b) to (e) do not apply to the issuer.

Exception

141.1(4) Les alinéas (3)b) à e) ne s'appliquent pas à l'émetteur.

Limit on amount recoverable

141.1(5) The amount recoverable under this section shall not exceed the price at which the securities were offered under the offering memorandum.

Limite

141.1(5) Les sommes recouvrables au titre du présent article ne peuvent être supérieures au prix auquel les valeurs mobilières étaient offertes dans la notice d'offre.

Damages not recoverable

141.1(6) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

Limitation des dommages-intérêts

141.1(6) Dans l'action en dommages-intérêts visée au paragraphe (1), le défendeur n'est pas tenu de payer tout ou partie des dommages-intérêts demandés lorsqu'il démontre que la dépréciation en valeur de la valeur mobilière ne découle pas de l'information fausse et trompeuse.

Joint and severable liability

141.1(7) All or any one or more of the persons or companies specified in subsection (1) that are found to be liable or accept liability under this section are jointly and severally liable.

Responsabilité conjointe et individuelle

141.1(7) Les personnes et compagnies visées au paragraphe (1) qui sont déclarées responsables ou reconnaissent leur responsabilité sont responsables conjointement et individuellement.

Defendant may recover contribution

141.1(8) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in

Recouvrement auprès des codéfendeurs

141.1(8) Le défendeur tenu de payer des dommages-intérêts peut en recouvrer la totalité ou une partie auprès de toute autre

part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

personne responsable conjointement et individuellement sous le régime du présent article du versement des mêmes dommages-intérêts dans la même cause d'action, sauf si le tribunal, compte tenu des circonstances, estime que permettre le recouvrement ne serait pas juste et équitable.

Rights are in addition to other rights

141.1(9) The rights of action for rescission or damages conferred by this section are in addition to and do not derogate from any other right that the purchaser may have at law.

Caractère supplétif

141.1(9) Les droits d'action en rescision et en dommages-intérêts que prévoit le présent article s'ajoutent aux recours dont l'acheteur peut bénéficier en droit et ne leur portent nullement atteinte.

Deemed misrepresentation

141.1(10) If a misrepresentation is contained in a record that is incorporated by reference in, or that is deemed to be incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum.

Présomption

141.1(10) L'information fausse et trompeuse qui se trouve dans un document incorporé par renvoi — ou réputé incorporé par renvoi — dans la notice d'offre est présumée se trouver dans la notice elle-même.

Statutory rights — misrepresentation in take-over bid circular or notice of change or variation

141.1.1(1) If a take-over bid circular or a notice of change to or variation in a circular is sent to the holders of securities of an offeree issuer or to the holders of securities

Circulaire d'offre ou avis de changement

141.1.1(1) Si une circulaire d'offre publique d'achat ou un avis de changement est envoyé aux détenteurs de valeurs mobilières d'un émetteur pollicité ou aux détenteurs de valeurs mobilières convertibles en valeurs

convertible into securities of an offeree issuer as required under the regulations and that document contains a misrepresentation, each of those holders

mobilières de l'émetteur pollicité conformément aux règlements et que le document contienne une information fausse et trompeuse, les détenteurs :

(a) is deemed to have relied on the misrepresentation; and

a) sont réputés s'être fondés sur cette information;

(b) may choose to exercise a right of action

b) peuvent choisir d'exercer un droit d'action :

(i) for rescission or damages against the offeror, or

(i) en rescision ou en dommages-intérêts contre le pollicitant,

(ii) for damages against

(ii) en dommage-intérêts contre :

(A) every person who, at the time the circular or notice was signed, was a director of the offeror,

(A) les personnes qui, au moment de la signature de la circulaire ou de l'avis, étaient administratrices du pollicitant,

(B) every person or company whose consent has been filed pursuant to a requirement of the regulations, but only with respect to reports, opinions or statements that have been made by them, and

(B) les personnes ou les compagnies qui ont déposé, conformément aux règlements, leur consentement, mais uniquement en ce qui a trait à la communication de rapports, d'opinions ou de déclarations provenant d'elles,

(C) each person, other than the ones referred to in paragraph (A), who signed a certificate in the circular or notice.

(C) les personnes, autres que celles visées à la division (A), qui ont signé un certificat

figurant sur la circulaire
ou l'avis.

**Statutory rights —
misrepresentation in
directors' circular**

141.1.1(2) If a directors' circular, an individual director's or officer's circular or a notice of change to or variation in one of those circulars is sent to security holders of an offeree issuer as required under the regulations and that document contains a misrepresentation, each of the persons or companies to whom the circular or notice was sent is deemed to have relied on the misrepresentation and,

(a) in respect of a misrepresentation in a directors' circular or a notice of change to or variation in such a circular, has a right of action for damages against

(i) every director or officer who signed the circular or notice of change or variation, and

(ii) every person or company whose consent has been filed pursuant to a requirement of the regulations, but only with respect to reports, opinions or statements that have been made by them; and

**Circulaire des
administrateurs**

141.1.1(2) Si une circulaire des administrateurs, d'un administrateur ou d'un dirigeant en particulier ou un avis de changement à l'un de ces documents est envoyé aux détenteurs de valeurs mobilières d'un émetteur pollicité conformément aux règlements et que le document contienne une information fausse et trompeuse, chaque personne ou compagnie qui l'a reçu est réputé s'être fondée sur cette information. Si l'information fausse et trompeuse est contenue :

a) dans la circulaire ou l'avis de changement des administrateurs, la personne ou la compagnie a un droit d'action en dommages-intérêts contre :

(i) les administrateurs ou dirigeants qui ont signé le document,

(ii) les personnes ou les compagnies qui ont déposé, conformément aux règlements, leur consentement, mais uniquement en ce qui a trait à la communication de rapports, d'opinions ou

(b) in respect of a misrepresentation in an individual director's or officer's circular, or a notice of change to or variation in such a circular, has a right of action for damages against

(i) every director or officer who signed the circular or notice of change or variation, and

(ii) every person or company whose consent has been filed pursuant to the regulations, but only with respect to reports, opinions or statements that have been made by them.

de déclarations provenant d'elles;

b) dans la circulaire ou l'avis de changement d'un administrateur ou d'un dirigeant en particulier, la personne ou la compagnie a un droit d'action en dommages-intérêts contre :

(i) les administrateurs ou dirigeants qui ont signé le document,

(ii) les personnes ou les compagnies qui ont déposé, conformément aux règlements, leur consentement, mais uniquement en ce qui a trait à la communication de rapports, d'opinions ou de déclarations provenant d'elles.

Application to issuer bid circulars

141.1.1(3) The provisions of subsection (1) apply, with necessary changes, to

(a) an issuer bid circular that contains a misrepresentation; or

(b) a notice of change to or variation in an issuer bid circular that contains a misrepresentation.

Application aux circulaires d'offre publique de rachat

141.1.1(3) Les dispositions du paragraphe (1) s'appliquent, avec les adaptations nécessaires :

a) aux circulaires d'offre publique de rachat qui contiennent une information fausse et trompeuse;

b) aux avis de changements à de telles circulaires.

Defence when security holder has knowledge

141.1.1(4) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.

Other defences

141.1.1(5) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if the person or company proves that

(a) the circular or the notice of change or variation was sent without the person's or company's knowledge or consent and that, after becoming aware of it, the person or company promptly gave reasonable general notice that it was sent without knowledge or consent;

(b) after the circular or the notice of change or variation was sent and the person or company became aware of a misrepresentation in it, the person or company promptly

(i) withdrew the person's or company's consent to it, and

(ii) gave reasonable general notice of the

Défense

141.1.1(4) Une personne ou une compagnie n'engage pas sa responsabilité au titre du paragraphe (1), (2) ou (3) si elle prouve que le détenteur des valeurs mobilières savait que l'information était fausse et trompeuse.

Autres moyens de défense

141.1.1(5) Une personne ou une compagnie, à l'exception d'un pollicitant, n'engage pas sa responsabilité au titre du paragraphe (1), (2) ou (3) dans les cas suivants :

a) elle prouve que la circulaire ou l'avis de changement a été envoyé à son insu ou sans son consentement et que, dès qu'elle a été informée de l'envoi, elle a rapidement donné un avis général raisonnable du fait que le document a été envoyé à son insu ou sans son consentement;

b) elle prouve que, après avoir envoyé la circulaire ou l'avis de changement et avoir été informée de la présence de l'information fausse et trompeuse dans ce document, elle a rapidement retiré son consentement et donné un avis général raisonnable de ce retrait ainsi que des motifs qui le justifient;

withdrawal and the reason for it;

(c) with respect to any part of the circular or notice of change or variation purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion or statement, the person or company had no reasonable grounds to believe and did not believe

(i) that there had been a misrepresentation, or

(ii) that the relevant part of the circular or notice of change or variation

(A) did not fairly represent the expert's report, opinion or statement, or

(B) was not a fair copy of, or extract from, the expert's report, opinion or statement;

(d) with respect to any part of the circular or notice of change or variation purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of, or an extract from, the person's or company's own report, opinion or statement as an expert, but that

c) à l'égard de la partie de la circulaire ou de l'avis de changement apparemment fondée sur l'opinion d'un expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration d'un expert, elle prouve qu'elle n'avait aucun motif raisonnable de croire et ne croyait véritablement pas :

(i) soit qu'il y avait une information fausse et trompeuse,

(ii) soit que la partie en cause ne présentait pas fidèlement le rapport, l'avis ou la déclaration de l'expert, ou n'en constituait pas une copie ou un extrait fidèle;

d) à l'égard de la partie de la circulaire ou de l'avis de changement apparemment fondée sur sa propre opinion en sa qualité d'expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration provenant d'elle en sa qualité d'expert, mais qui contient une information fausse et trompeuse du fait qu'elle ne présente pas fidèlement le rapport, l'avis ou la déclaration :

(i) elle prouve qu'elle avait des motifs

contains a misrepresentation attributable to a failure to represent fairly the person's or company's report, opinion or statement as an expert,

(i) the person or company had, after conducting an investigation, reasonable grounds to believe and did believe that the part of the circular fairly represented the person's or company's report, opinion or statement as an expert, or

(ii) after becoming aware that the part of the circular did not fairly represent the person's or company's report, opinion or statement as an expert, the person or company promptly advised the Director and gave reasonable general notice that misuse had been made of it and that the person or company would not be responsible for that part of the circular; or

(e) with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document,

(i) it was a correct and fair representation of the

raisonnables de croire et qu'elle croyait véritablement que, après une enquête raisonnable, la partie en cause donnait une présentation fidèle,

(ii) elle prouve qu'elle a informé le directeur et donné un avis général raisonnable de l'utilisation abusive et du fait qu'elle n'assumait aucune responsabilité à l'égard de cette partie du document, dès qu'elle a appris que la présentation n'était pas fidèle;

e) elle prouve, à l'égard d'une déclaration fausse présentée comme étant une déclaration d'un représentant officiel ou contenue dans un document présenté comme étant une copie ou un extrait d'un document officiel public, que cette déclaration donnait une présentation juste et exacte de la déclaration ou de la copie ou de l'extrait du document et qu'elle avait des motifs raisonnables de croire et croyait véritablement que cette déclaration était vraie.

statement or copy of, or
extract from, the
document, and

(ii) the person or company
had reasonable grounds to
believe and did believe
that the statement was
true.

**When expert not liable for
own report**

141.1.1(6) No person or
company, other than the
offeror, is liable under
subsection (1), (2) or (3) with
respect to any part of the
circular or notice of change or
variation purporting to be
made on the person's or
company's own authority as an
expert or purporting to be a
copy of, or an extract from, the
person's or company's own
report, opinion or statement as
an expert unless the person or
company

(a) did not conduct an
investigation sufficient to
provide reasonable grounds
for a belief that there had
been no misrepresentation;
or

(b) believed there had been
a misrepresentation.

**When others not liable for
expert's report**

141.1.1(7) No person or
company, other than the
offeror, is liable under

Responsabilité de l'expert

141.1.1(6) Une personne ou
une compagnie, à l'exception
du pollicitant, n'engage pas sa
responsabilité au titre du
paragraphe (1), (2) ou (3) à
l'égard de la partie de la
circulaire ou de l'avis de
changement apparemment
fondée sur sa propre opinion
en sa qualité d'expert ou
présentée comme étant une
copie ou un extrait d'un
rapport, d'un avis ou d'une
déclaration provenant d'elle en
sa qualité d'expert, sauf si elle
n'a pas fait d'enquête
suffisante pour lui permettre
d'avoir des motifs
raisonnables de croire
qu'aucune information fausse
et trompeuse n'était
communiquée ou sauf si elle
croyait que la partie en cause
contenait une information
fausse et trompeuse.

**Responsabilité d'autres
parties**

141.1.1(7) Une personne ou
une compagnie, à l'exception
du pollicitant, n'engage pas sa

subsection (1), (2) or (3) with respect to any part of the circular or notice of change or variation not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, an expert's report, opinion or statement unless the person or company

(a) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

Limit on particular defendant's liability

141.1.1(8) In an action for damages under subsection (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror in exchange for securities of the offeree issuer, the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation.

responsabilité au titre du paragraphe (1), (2) ou (3) à l'égard de toute partie de la circulaire ou de l'avis de changement qui n'est pas apparemment fondée sur l'opinion d'un expert ou présentée comme étant une copie ou un extrait d'un rapport, d'un avis ou d'une déclaration d'un expert, sauf si elle n'a pas fait d'enquête suffisante pour lui permettre d'avoir des motifs raisonnables de croire qu'aucune information fausse et trompeuse n'était communiquée ou sauf si elle croyait que la partie en cause contenait une information fausse et trompeuse.

Limitation des dommages-intérêts

141.1.1(8) Dans l'action en dommages-intérêts visée au paragraphe (1), (2) ou (3) et intentée en raison d'une information fausse et trompeuse ayant une incidence sur les valeurs mobilières offertes par le pollicitant en échange de valeurs mobilières de l'émetteur pollicité, le défendeur n'est pas tenu de payer les dommages-intérêts demandés lorsqu'il démontre que la dépréciation ne découle pas de l'information fausse et trompeuse.

Joint and several liability

141.1.1(9) All or any one or more of the persons or companies specified in subsection (1), (2) or (3) that are found to be liable or accept liability under this section are jointly and severally liable.

Defendant may recover contribution

141.1.1(10) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company that is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

Rights are in addition to other rights

141.1.1(11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right that the security holders may have at law.

Deemed misrepresentation

141.1.1(12) If a misrepresentation is contained

Responsabilité conjointe et individuelle

141.1.1(9) Les personnes et compagnies visées au paragraphe (1), (2) ou (3) qui sont déclarées responsables ou qui reconnaissent leur responsabilité sont responsables conjointement et individuellement.

Recouvrement auprès des codéfendeurs

141.1.1(10) Le défendeur tenu de payer des dommages-intérêts peut en recouvrer la totalité ou une partie auprès de toute autre personne ou compagnie responsable conjointement et individuellement sous le régime du présent article du versement des mêmes dommages-intérêts dans la même cause d'action, sauf si le tribunal, compte tenu des circonstances, estime qu'il ne serait pas juste et équitable de permettre le recouvrement.

Caractère supplétif

141.1.1(11) Les droits d'action en rescission et en dommages-intérêts que prévoit le présent article s'ajoutent aux recours dont le détenteur de valeurs mobilières peut bénéficier en droit et ne leur portent nullement atteinte.

Présomption

141.1.1(12) L'information fausse et trompeuse qui se

in a record that is incorporated by reference in, or that is deemed to be incorporated by reference into, a take-over or issuer bid circular or a notice of change to or variation in such a circular, the misrepresentation is deemed to be contained in the circular or the notice of change or variation.

Statutory rights — failing to send required document

141.2 A person or company that is

(a) a purchaser of a security to whom a prospectus or other prescribed document was required to be sent in compliance with the regulations, but was not so sent;

(b) a security holder of an offeree issuer or another person or company that is not a security holder of an offeree issuer to which

(i) a take-over bid and take-over bid circular,

(ii) an issuer bid and issuer bid circular, or

(iii) a notice of change to or variation in a bid or circular referred to in subclause (i) or (ii),

trouve dans un document incorporé par renvoi — ou réputé incorporé par renvoi — dans une circulaire d'offre publique d'achat, une circulaire d'offre publique de rachat ou un avis de changement à ces documents est présumée se trouver dans la circulaire ou l'avis lui-même.

Droits d'action en cas d'omission

141.2 A un droit d'action en rescision ou en dommages-intérêts contre le courtier, le pollicitant ou l'émetteur qui ne s'est pas conformé à une exigence :

a) l'acheteur de valeurs mobilières à qui un document réglementaire, notamment un prospectus, devait être envoyé en conformité avec les règlements mais à qui il ne l'a pas été;

b) le détenteur de valeurs mobilières d'un émetteur pollicité ou une autre personne ou compagnie qui n'est pas une telle détentrice et à qui les documents indiqués ci-dessous devaient être envoyés sous le régime de la partie IX et des règlements pris pour son application mais à qui ils ne les ont pas été :

was required to be sent in compliance with Part IX and the regulations made for the purposes of that Part, but was not so sent; or

(c) a purchaser of a security to whom an offering memorandum was required to be sent in compliance with the regulations respecting offering memorandums, but was not sent within the time prescribed for sending the offering memorandum by those regulations;

has a right of action for rescission or damages against the dealer, offeror or issuer who did not comply with the requirement.

Limitation period re prospectus misrepresentation

141.4(1) Unless otherwise provided in this Act, no action may be commenced to enforce a right created by section 141,

(a) in the case of an action for rescission, more than 180 days after

(i) the day that the plaintiff received the prospectus containing the misrepresentation, or

(ii) the day that the plaintiff acquired the

(i) soit une offre publique d'achat et une circulaire d'offre publique d'achat,

(ii) soit une offre publique de rachat et une circulaire d'offre publique de rachat,

(iii) soit un avis de changement à une offre ou à une circulaire visée au sous-alinéa (i) ou (ii);

c) l'acheteur de valeurs mobilières à qui une notice d'offre devrait être envoyée en application des règlements sur les notices d'offre mais à qui elle ne l'a pas été dans le délai réglementaire.

Prescription

141.4(1) Sauf disposition contraire de la présente loi, aucune action ne peut être intentée en vue de l'exercice d'un droit créé par l'article 141 après l'expiration des délais suivants :

a) dans le cas d'une action en rescision, 180 jours après le jour où le demandeur a reçu le prospectus contenant l'information fausse et trompeuse ou après celui où il a acquis les valeurs mobilières auxquelles ce prospectus se rapporte, selon celle de ces

security that the
prospectus relates to,

éventualités qui se produit la
dernière;

whichever occurs later; or

b) dans le cas d'une autre
action, 180 jours après le
jour où le demandeur a été
informé des faits à l'origine
de l'action ou 2 ans après le
jour de la transaction qui est
à l'origine de l'action, selon
celle de ces éventualités qui
se produit la première.

(b) in any other case, more
than

(i) 180 days after the day
that the plaintiff first had
knowledge of the facts
giving rise to the cause of
action, or

(ii) two years after the day
of the transaction that gave
rise to the cause of action,

whichever occurs earlier.

Limitation period re other rights of action

141.4(2) Unless otherwise
provided in this Act, no action
may be commenced to enforce
a right created by
section 141.1, 141.1.1 or
141.2,

(a) in the case of an action
for rescission, more than
180 days after the day of the
transaction that gave rise to
the cause of action; or

(b) in any other case, more
than

(i) 180 days after the day
that the plaintiff first had
knowledge of the facts
giving rise to the cause of
action, or

Prescription

141.4(2) Sauf disposition
contraire de la présente loi,
aucune action ne peut être
intentée en vue de l'exercice
d'un droit conféré par
l'article 141.1, 141.1.1 ou
141.2 après l'expiration des
délais suivants :

a) dans le cas d'une action
en rescision, 180 jours après
le jour de la transaction qui
est à l'origine de l'action;

b) dans le cas d'une autre
action, 180 jours après le
jour où le demandeur a été
informé des faits à l'origine
de l'action ou 2 ans après le
jour de la transaction qui est
à l'origine de l'action, selon

(ii) two years after the day of the transaction that gave rise to the cause of action,

celle de ces éventualités qui se produit la première.

whichever occurs earlier.

Documents released by responsible issuer

176(1) If a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company that acquires or disposes of the issuer's security during the period between

(a) the time when the document was released; and

(b) the time when the misrepresentation contained in the document was publicly corrected;

has a right of action for damages against the parties listed in subsection (2), without regard to whether the person or company relied on the misrepresentation.

Persons and companies who may be liable

176(2) The right of action is against

(a) the responsible issuer;

(b) each director of the responsible issuer at the

Documents publiés par l'émetteur responsable

176(1) La personne ou la compagnie qui acquiert ou aliène une valeur mobilière d'un émetteur responsable entre le moment où un document comportant des informations fausses et trompeuses a été publié par l'émetteur ou par une personne ou une compagnie autorisée, véritablement, apparemment ou de façon implicite, à le représenter et le moment où les informations fausses et trompeuses sont publiquement corrigées peut intenter une action en dommages-intérêts contre les parties mentionnées au paragraphe (2), qu'elle se soit fiée ou non aux informations fausses et trompeuses pour se décider.

Personnes et compagnies responsables

176(2) L'action en dommages-intérêts peut être intentée contre :

a) l'émetteur responsable;

time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director or officer of an influential person, who knowingly influenced

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released by a person or company other than the expert, the expert

b) les administrateurs de l'émetteur responsable en fonction au moment de la publication du document;

c) les dirigeants de l'émetteur responsable qui ont autorisé la publication du document ou y ont consenti;

d) les personnes influentes et leurs administrateurs ou dirigeants qui ont sciemment influé soit sur l'émetteur responsable ou une personne ou compagnie agissant en son nom pour qu'il publie le document, soit sur un administrateur ou un dirigeant de l'émetteur pour qu'il autorise la publication du document ou y consente;

e) l'expert, si les conditions qui suivent sont réunies :

(i) les informations fausses et trompeuses se trouvent dans un rapport, une déclaration ou un avis provenant de lui,

(ii) le document reprend, résume ou cite le rapport, la déclaration ou l'avis de l'expert,

(iii) l'expert a consenti par écrit à l'utilisation du rapport, de la déclaration ou de l'avis dans le

consented in writing to the use of the report, statement or opinion in the document.

document, dans le cas où il a été publié par un tiers.

Public oral statements by responsible issuer

176(3) If a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between

(a) the time when the public oral statement was made; and

(b) the time when the misrepresentation contained in the public oral statement was publicly corrected;

has a right of action for damages against the parties listed in subsection (4), without regard to whether the person or company relied on the misrepresentation.

Persons and companies who may be liable

176(4) The right of action is against

(a) the responsible issuer;

Déclarations verbales publiques de l'émetteur responsable

176(3) La personne ou la compagnie qui acquiert ou aliène une valeur mobilière d'un émetteur responsable entre le moment où une déclaration verbale publique concernant les activités commerciales ou les affaires internes de l'émetteur et comportant des informations fausses et trompeuses a été faite par une personne autorisée, véritablement, apparemment ou de façon implicite, à le représenter et le moment où les informations fausses et trompeuses sont publiquement corrigées peut intenter une action en dommages-intérêts contre les parties mentionnées au paragraphe (4), qu'elle se soit fiée ou non aux informations fausses et trompeuses pour se décider.

Personnes et compagnies responsables

176(4) L'action en dommages-intérêts peut être intentée contre :

- (b) the person who made the public oral statement;
 - (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
 - (d) each influential person, and each director and officer of the influential person, who knowingly influenced
 - (i) the person who made the public oral statement to make it, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and
 - (e) each expert where
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the expert's report, statement or opinion, and
 - (iii) if the public oral statement was made by a person other than the
- a) l'émetteur responsable;
 - b) l'auteur de la déclaration verbale publique;
 - c) les administrateurs et les dirigeants de l'émetteur responsable qui ont autorisé la déclaration ou y ont consenti;
 - d) les personnes influentes et leurs administrateurs ou dirigeants qui ont sciemment influé soit sur l'auteur de la déclaration pour qu'il la fasse, soit sur un administrateur ou un dirigeant de l'émetteur pour qu'il autorise la déclaration ou y consente;
 - e) l'expert, si les conditions qui suivent sont réunies :
 - (i) les informations fausses et trompeuses se trouvent également dans un rapport, une déclaration ou un avis provenant de lui,
 - (ii) la déclaration verbale publique reprend, résume ou cite le rapport, la déclaration ou l'avis de l'expert,
 - (iii) l'expert a consenti par écrit à l'utilisation du rapport, de la déclaration ou de l'avis dans la déclaration verbale

expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

publique, dans le cas où elle a été faite par un tiers.

Influential persons

176(5) If an influential person or a person or company with actual, implied or apparent authority to act on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between

(a) the time when the document was released or the public oral statement was made; and

(b) the time when the misrepresentation contained in the document or public oral statement was publicly corrected;

has a right of action for damages against the parties listed in subsection (6), without regard to whether the person or company relied on the misrepresentation.

Persons and companies who may be liable

176(6) The right of action is against

Personnes influentes

176(5) La personne ou la compagnie qui acquiert ou aliène une valeur mobilière d'un émetteur responsable entre le moment où un document ou une déclaration verbale publique concernant l'émetteur et comportant des informations fausses et trompeuses est soit publié, soit faite, selon le cas, par une personne influente ou une personne autorisée, véritablement, apparemment ou de façon implicite, à la représenter et le moment où les informations fausses et trompeuses sont publiquement corrigées peut intenter une action en dommages-intérêts contre les parties mentionnées au paragraphe (6), qu'elle se soit fiée ou non aux informations fausses et trompeuses pour se décider.

Personnes et compagnies responsables

- (a) the responsible issuer if
- (i) a director or officer of the responsible issuer, or
 - (ii) the investment fund manager, when the responsible issuer is an investment fund,
- authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (f) each expert where
- (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
- 176(6)** L'action en dommages-intérêts peut être intentée contre :
- a) l'émetteur responsable, si l'un de ses administrateurs ou dirigeants — ou si le gestionnaire de fonds de placement lorsque l'émetteur responsable est un fonds de placement — a autorisé la publication du document ou la déclaration verbale, ou y a consenti;
 - b) l'auteur de la déclaration verbale publique;
 - c) les administrateurs et les dirigeants de l'émetteur responsable qui ont autorisé la publication du document ou la déclaration ou y ont consenti;
 - d) la personne influente;
 - e) les administrateurs et les dirigeants de la personne influente qui ont autorisé la publication du document ou la déclaration ou y ont consenti;
 - f) l'expert, si les conditions qui suivent sont réunies :
 - (i) les informations fausses et trompeuses se trouvent également dans un rapport, une déclaration ou un avis provenant de lui,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

(ii) le document ou la déclaration verbale publique reprend, résume ou cite le rapport, la déclaration ou l'avis de l'expert,

(iii) l'expert a consenti par écrit à l'utilisation du rapport, de la déclaration ou de l'avis dans le document ou dans la déclaration verbale publique, dans le cas où le document a été publié ou la déclaration verbale faite par un tiers.

Failure to make timely disclosure

176(7) If a responsible issuer fails to make timely disclosure, a person or company who acquires or disposes of the issuer's security between

(a) the time when the material change was required by this Act or the regulations to be disclosed; and

(b) the later disclosure of the material change in the manner required by this Act or the regulations; has a right of action for damages against the parties listed in subsection (8), without regard to whether the person or company relied on the responsible issuer having

Défaut de divulgation obligatoire

176(7) La personne ou la compagnie qui acquiert ou aliène des valeurs mobilières d'un émetteur responsable entre le moment où un changement important devait, en conformité avec la présente loi ou les règlements, être divulgué et celui de sa divulgation tardive peut intenter une action en dommages-intérêts contre les parties mentionnées au paragraphe (8), qu'elle ait présumé ou non que l'émetteur responsable respectait ses obligations de divulgation obligatoire.

complied with its disclosure requirements.

Persons and companies who may be liable

176(8) The right of action is against

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple roles

176(9) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if he or she is liable as a director or officer of the responsible issuer

Personnes et compagnies responsables

176(8) L'action en dommages-intérêts peut être intentée contre :

- a) l'émetteur responsable;
- b) les administrateurs et les dirigeants de l'émetteur responsable qui ont autorisé le défaut de divulgation ou y ont consenti;
- c) les personnes influentes et leurs administrateurs ou dirigeants qui ont sciemment influé soit sur l'émetteur responsable ou une personne ou compagnie agissant en son nom pour qu'il contrevienne à ses obligations de divulgation obligatoire, soit sur un administrateur ou un dirigeant de l'émetteur pour qu'il autorise le défaut de divulgation ou y consente.

Rôles multiples

176(9) Dans une action intentée en vertu du présent article, une personne n'engage pas sa responsabilité à titre d'administrateur ou de dirigeant d'une personne influente si sa responsabilité

est déjà engagée à titre d'administrateur ou de dirigeant de l'émetteur responsable.

Multiple misrepresentations

176(10) In an action under this section, the court may treat

(a) multiple misrepresentations having common subject matter or content as a single misrepresentation; and

(b) multiple instances of failure to make timely disclosure of material changes concerning common subject matter as a single failure to make timely disclosure.

No implied or actual authority

176(11) In an action under subsection (3) or (5), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before the other person became, or should reasonably have become, aware of the misrepresentation.

Pluralité d'informations fausses et trompeuses

176(10) Dans une action intentée en vertu du présent article, le tribunal peut :

a) assimiler à une information fausse et trompeuse unique toutes celles dont le contenu est identique ou qui traitent du même sujet;

b) assimiler à un seul cas de défaut de divulgation obligatoire tous ceux qui traitent du même sujet

Absence d'autorisation véritable ou implicite

176(11) Dans une action intentée en vertu des paragraphes (3) ou (5), seul l'auteur de la déclaration verbale publique engage sa responsabilité dans les cas où il était autorisé apparemment à parler au nom de l'émetteur responsable, sans l'être véritablement ou de façon implicite; la responsabilité des autres personnes ne l'est qu'à l'égard des valeurs mobilières de l'émetteur responsable qui ont été acquises ou aliénées à compter du moment où elles ont été mises au courant de l'existence des informations

fausses et trompeuses, ou auraient dû raisonnablement l'avoir été.

Limitation periods

197(1) No action may be commenced under section 176,

(a) in respect of a misrepresentation in a document, later than the earlier of

(i) three years after the document containing the misrepresentation was first released, and

(ii) six months after a news release is issued stating that leave has been granted to commence an action under section 176 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation;

(b) in respect of a misrepresentation in a public oral statement, later than the earlier of

(i) three years after the public oral statement containing the misrepresentation was made, and

(ii) six months after a news release is issued stating that leave has been

Délais de prescription

197(1) L'action visée à l'article 176 se prescrit :

a) dans le cas d'un document qui comporte des informations fausses et trompeuses, par trois ans à compter de la première publication du document ou six mois à compter de la publication d'un communiqué portant que l'autorisation d'intenter une action en vertu de cet article ou d'une disposition législative semblable d'une autre province ou d'un territoire canadien pour les mêmes informations fausses et trompeuses a été accordée, selon la première de ces éventualités à survenir;

b) dans le cas d'une déclaration verbale publique qui comporte des informations fausses et trompeuses, par trois ans à compter du moment où elle est faite ou six mois à compter de la publication d'un communiqué portant que l'autorisation d'intenter une action en vertu de cet article ou d'une disposition législative semblable d'une autre province ou d'un

granted to commence an action under section 176 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in respect of a failure to make timely disclosure, later than the earlier of

(i) three years after the requisite disclosure was required to be made, and

(ii) six months after a news release is issued stating that leave has been granted to commence an action under section 176 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

territoire canadien pour les mêmes informations fausses et trompeuses a été accordée, selon la première de ces éventualités à survenir;

c) dans le cas d'un défaut de divulgation obligatoire, par trois ans à compter du moment où la divulgation devait être faite ou six mois à compter de la publication d'un communiqué portant que l'autorisation d'intenter une action en vertu de cet article ou d'une disposition législative semblable d'une autre province ou d'un territoire canadien pour le même défaut de divulgation obligatoire a été accordée, selon la première de ces éventualités à survenir.