

## REITs and Income Funds

June 22, 2004

### Ontario Introduces Limited Liability Legislation for Income Trusts

The Ontario government tabled legislation yesterday in the legislature to provide certainty to unitholders of publicly traded trusts that their exposure to claims against the trust will be limited to their investment. The new legislation will apply to unitholders of any trust that is a “reporting issuer” under the *Securities Act* (Ontario) if its declaration of trust selects Ontario as its governing law.

Bill 106, *Budget Measures Act, 2004* (No. 2), proposes the enactment of the *Trust Beneficiaries' Liability Act, 2004* (the “Ontario Act”).

The Ontario Act will provide that investors in a publicly traded trust are not liable, as beneficiaries of the trust, for any act, default, obligation or liability of the trust or any of its trustees. The Ontario Act will apply to unitholders of any trust if it is a

“reporting issuer” under the *Securities Act* (Ontario) and its trust instrument states that it is governed by the laws of Ontario. It will apply to all activities or obligations of a trust or its trustees that occur or arise after Bill 106 receives Royal Assent.

The Province of Alberta recently passed similar legislation, the *Income Trust Liability Act* (the “Alberta Act”) which comes into force on July 1, 2004. While the Alberta Act and the proposed Ontario Act are similar in a number of respects, trusts established under the laws of other jurisdictions may shift jurisdiction to Ontario to obtain the benefit of the Ontario Act. The Alberta Act, on the other hand, applies only to trusts created under Alberta law.

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# Goodmans<sup>LLP</sup> Update

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