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FAX COVER SHEET
Reply fax 64/3/366-2660

TO

Person: **Harmon Wilfred and Carolyn Dare Wilfred.**

Fax number: 3264075

From: John Rutherford

Date: 1 April 2005

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Dear Mr & Mrs Wilfred

Colorado Code of Criminal Procedure

We understand that you have been recommended to this firm as a specialist in the interpretation of United States Federal and State laws, and seek an opinion on an aspect of Colorado law. It is true that since the writer was a university lecturer in International Laws several decades ago that we have developed a number of multinational clients doing business in the United States. For example, by virtue of our acting for the largest satellite teleport in the western US for almost a decade, which was frequently skirmishing with telephone companies and state governments on communications issues, we have developed a familiarity in particular with the laws of California, Colorado, Oregon, Nevada, South Carolina, Texas, and Washington.

You seek an opinion as to the criminal law applicable in Colorado as related to charges brought against Mr Wilfred in respect to matrimonial and custody issues some years ago. We understand that such charges were never prosecuted through to a hearing where the parties could present their cases and have a final decision from a judge. Such charges were not of a Federal nature but related to matters within the jurisdiction of the state government where the Code applying to criminal procedures has much the same procedures and limitations as our Judicature and Limitation Acts.

In many jurisdictions the need for the prosecutor to bring a criminal indictment to trial within six months is commonplace. In the event of his failure to do so the prosecution becomes null and void and would be struck out by a judge in the event of such an application by the accused. In many cases such prosecutions remain as incomplete cases in court files especially where the charge was minor; the prosecutor has not gathered the requisite evidence; but neither party wishes to incur the cost of a further court appearance.

We attach a relevant extract from the Rules of Criminal Procedure for Colorado in the form of Rule 48 of Chapter 29, which clearly states that indictments that are not brought to trial in the time frame prescribed must be dismissed. This dismissal is mandatory and not subject to any conditions. Likewise the person so indicted cannot be charged again with the same offence, a circumstance that is referred to in the US jargon as "double jeopardy". While you are clearly not personally present in the State of Colorado to approach the Court to seek a dismissal confirming what is prescribed by the Rule, you can be assured that the old indictments in the circumstances you have described to us, have lapsed, are of no further effect, and cannot be revived.

You may use this opinion in respect to your immigration proposals if so required.

Yours sincerely

RUTHERFORD & COMPANY



John Rutherford

COLORADO RULES OF CRIMINAL PROCEDURE

CHAPTER 29

VIII. Supplementary and Special Proceedings

Rule 48. Dismissal

(1) If, after the filing of a complaint, there is unnecessary delay in finding an indictment or filing an information against a defendant who has been held to answer in a district court, the court may dismiss the prosecution. Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, the pending charges shall be dismissed, whether he is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed for the same offence, or for another offence based upon the same act or series of acts arising out of the same criminal episode.

(2) If trial results in conviction which is reversed on appeal, any new trial must be commenced within six months after the date of the receipt by the trial court of the mandate from the appellate court.