

CLASS ACTIONS

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Shareholder oppression claims can now be class proceedings

In November 2010, the BC Court of Appeal fundamentally changed the shareholder dispute resolution landscape when it decided that shareholder oppression claims could now be certified as class proceedings (*Jellema vs. American Bullion Minerals Ltd.*).

Although the decision arose in a mining context, this decision impacts all corporations in the province – both closely held and publicly traded – as they may be subject to significant oppression claims as a result of dealings on behalf of all corporate stakeholders, even if there is only a small effect on individual stakeholders.

American Bullion Minerals owned an interest in a mining property, but was bankrupted in 2006 by its majority shareholder. Two minority shareholders persuaded the Supreme Court of British Columbia to annul the bankruptcy on the grounds that the majority shareholder had bankrupted the corpora-



tion to acquire its interest in the property for less than it was worth.

The shareholders launched an oppression claim against American Bullion Minerals and others, seeking an order requiring the corporation, or its majority shareholder, to buy their shares at their fair value as determined by the court.

The plaintiffs applied to have that claim certified as a class proceeding.

The supreme court dismissed the certification application, concluding that a claim could not be certified under the Class Proceedings Act where it could be made in a representative capacity under other legislation.

The court noted that since

an oppression claim could be made in such a capacity under the Business Corporations Act, it could not be certified as a class proceeding.

The court of appeal disagreed, concluding that an oppression claim could not be made in a representative capacity under the Business Corporations Act and could therefore be certified.

This court of appeal decision fundamentally changes the British Columbia shareholder dispute resolution landscape. It has far-reaching implications beyond the mining sector, empowering corporate stakeholders by providing a new, economically viable avenue to pursue oppression claims.

Shareholders that might

not have considered it feasible to seek relief for oppressive corporate conduct by themselves may now find that certification under the “no cost” regime provided for under the Class Proceedings Act does allow them to pursue such claims.

Even if the representative claimants fail in a certification application, a trial of common issues in the class proceeding or an appeal from it, they will not have to pay any of the defendants’ legal costs.

These factors make it much easier for representative claimants and class counsel to make oppression claims. All stakeholders should re-evaluate their positions in light of this change in the legal landscape.

There is generally a six-year limitation period for making oppression claims, although they must be made while the conduct complained of can still be remedied. Stakeholders should also consider future corporate developments in light of this legal change.

All corporations need to understand their stakeholders’ reasonable expectations regarding the management of the corporation arising from issues like the corporate constitution, the relationships among corporate actors, corporate past practice and custom and the corporation’s representations to its stakeholders, and incorporate those considerations into their strategic planning.

Management teams must ensure that the corporation meets those expectations in the conduct of its business. Failing to do so could result in costly oppression litigation. ■

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