

CLASS DISMISSED

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In a recent case, *Jellema v. American Bullion Minerals Ltd.*, the Supreme Court of British Columbia refused to certify a shareholder's oppression claim as a class proceeding. The Court instead held that the claim was already representative in nature and that it was therefore precluded from being certified under the B.C. *Class Proceedings Act*.

Mr. Jellema and Mr. Newton were minority shareholders in American Bullion Minerals Ltd. (ABML), a mining company that formerly traded on the TSX Venture Exchange. ABML was petitioned into bankruptcy in 2006 by bcMetals Corporation, which was also ABML's majority shareholder. Mr. Jellema and Mr. Newton then commenced a proceeding in which they said that ABML, bcMetals, and an ABML director took actions which amounted to conduct that was oppressive or unfairly prejudicial to themselves and all other ABML minority shareholders. Some of the behaviour complained of related to the manner in which ABML was petitioned into bankruptcy. Mr. Jellema and Mr. Newton also sought relief on behalf of all minority shareholders, including that all of the minority shares be purchased.

The claim was brought pursuant to the oppression provisions of the *B.C. Business Corporations Act*. Section 227 of that *Act* provides that a shareholder may apply to a court for relief on the grounds that the affairs of a company have been conducted, or the powers of the directors have been exercised, in a manner oppressive to ***one or more of the shareholders, including the applicant***.

Mr. Jellema and Mr. Newton then applied to have their proceeding certified as a class proceeding under the B.C. *Class Proceedings Act*. Section 41 of that *Act*, however, says that it does not apply to a proceeding that may be brought in a representative capacity under another *Act*. In other words, class certification is prohibited if the claim is being brought pursuant to a statute that already allows the claim to be brought on behalf of others.

In the circumstances, the Supreme Court of British Columbia concluded that the wording of the appropriate provisions in the *Business Corporations Act* permitted an oppression proceeding to be commenced on behalf of many shareholders on a representative basis. It found that Mr. Jellema and Mr. Newton had started such a proceeding and that Section 41 of the *Class Proceedings Act* prohibited class certification of such a claim.

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There have not been many cases that have considered Section 41 of the *Class Proceedings Act*. This decision confirms that proceedings seeking relief under a B.C. statute on behalf of a group of persons must be pursued in the manner permitted by the particular statute and not as a class action.