

No Leave, No Claim: British Columbia Reinforces Gatekeeping for Secondary Market Claims

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Overview

In *Larouche v. PGM ResidualCo Holdings Inc.*,¹ the British Columbia Supreme Court denied leave to commence a secondary market misrepresentation claim under Part 16.1 of the British Columbia *Securities Act*.²

The decision confirms that the statutory leave requirement is stringent. Plaintiffs must present admissible evidence, properly plead the alleged misrepresentations, and bring the leave application within the applicable limitation period.

The decision is significant because it reinforces the court's gatekeeping role at the leave stage. It also clarifies that the British Columbia *Class Proceedings Act* does not suspend limitation periods for secondary market claims that a plaintiff had failed to properly advance.³

Background

The proposed claim arose from the operations of Pure Gold Mining Inc. (Pure Gold), which owned and operated a gold mine in Ontario. In 2022, Ms. Larouche commenced a class action proceeding against Pure Gold and others, alleging both primary and secondary market misrepresentation claims. The secondary market claim was later struck as a nullity because leave had not been obtained as required by the *Securities Act*.

Following insolvency proceedings involving Pure Gold, its unwanted assets and liabilities were vested in PGM ResidualCo Holdings Inc. (PGM) through a reverse vesting order. Ms. Larouche then filed a separate petition seeking leave to advance the secondary market claim against PGM.

The proposed claim alleged that Pure Gold's disclosure documents issued between March and November 2021 misrepresented the status of the mine. Ms. Larouche alleged that Pure Gold represented that the mine could achieve full and sustainable production, while omitting severe operational challenges, a shortage of access to high-grade ore, and an existential liquidity crisis.

The Leave Requirement

The Court began with the statutory framework for secondary market claims. Section 140.8 of the *Securities Act* provides that no action may be commenced under section 140.3 without leave of the Court.⁴ Leave may only be granted where a court is satisfied that the action is being brought in good faith and that there is a reasonable possibility the action will be resolved at trial in favour of the plaintiff.

The Court emphasized that this is a meaningful screening mechanism. A plaintiff must provide both a plausible analysis of the statutory provisions and credible evidence supporting the claim. The leave stage is not a mini-trial, but it requires more than mere allegations. The plaintiff must establish a realistic possibility of success. Ultimately, Ms. Larouche failed to meet that threshold.

Evidence From Another Proceedings is Not Enough

A central issue was the petitioner's attempt to rely on affidavits filed in the related class action, rather than filing the evidence in the petition proceeding itself. The Court rejected that approach.

The *Securities Act* requires the plaintiff to serve and file affidavits setting out the material facts on which the plaintiff intends to rely. The Court held that there is no general rule allowing a party to import evidence wholesale from another proceeding. Evidence from another proceeding may only be used where the parties agree, where a court orders it, or when it is properly attached and sworn in the new proceeding. None of those steps occurred.

The Court also found that, even if the affidavits had been attached, many contained hearsay and would not have been admissible. The Court declined to adjourn the application to allow the petitioner to correct the problem, noting that the evidence issue had been raised long before the hearing.

As a result, the only admissible evidence before the Court consisted largely of Pure Gold's public disclosure documents.

Pleading and Proof of Misrepresentation

The Court also found that the proposed pleading did not adequately identify the material facts alleged to be false or misleading. The pleading asserted broad conclusions about operational challenges and liquidity issues but did not identify with sufficient precision what facts were misstated, what facts were omitted, when they should have been disclosed, or why the alleged omissions made Pure Gold's disclosure misleading.

The Court was especially critical of the way the alleged misrepresentations were pleaded. In several instances, the pleading characterized disclosure documents as saying something they did not say. In others, the pleading ignored the fact that Pure Gold had disclosed the very risks and operational issues that the petitioner alleged were omitted, including production shortfalls, dilution, liquidity issues, and the need for additional financing.

Limitation Periods and the Class Proceedings Act

The Court also concluded that most of the proposed claim was statute barred. Section 140.94 of the *Securities Act*⁵ imposes a three-year limitation period running from the date of the alleged misrepresentation. Five of the six alleged disclosures were issued before November 2021. Because the earlier secondary market claim had been struck as a nullity, and the petition was not filed until November 2024, those claims were outside the limitation period.

The petitioner argued that section 38.1 of the *Class Proceedings Act* suspended the limitation period. The Court rejected that argument.⁶ Section 38.1 suspends limitation periods for class members once a certification application is filed. It does not preserve claims that the representative plaintiff has failed to properly advance. The Court held that the petitioner's interpretation would undermine both defendants' entitlement to certainty from unsubstantiated strike suits and costly unmeritorious litigation, and plaintiffs' obligations to diligently pursue their claims. The Court also refused to grant leave *nunc pro tunc* to avoid the limitation issue.

Outcome

The petition for leave was dismissed, with costs payable to PGM.

Larouche is an important reminder that secondary market misrepresentation claims are subject to a stricter screening process than ordinary proposed class actions. Plaintiffs must obtain leave before commencing the claim, file proper evidence in the leave proceeding, plead the alleged misrepresentation with precision, and move within the applicable limitation period.

For issuers and defendants, the decision confirms that the leave requirement remains a meaningful protection against unsubstantiated secondary market claims. For plaintiffs, it underscores the procedural requirements of the *Securities Act* are substantive in effect. A failure to comply with them may be fatal to a claim.

Cassels

¹ *Larouche v. PGM ResidualCo Holdings Inc.*, [2026 BCSC 674](#) (Larouche).

² *Securities Act*, [RSBC 1996, c 418](#) (*Securities Act*), Part [16.1](#).

³ *Class Proceedings Act*, [RSBC 1996, c 50](#) (*Class Proceedings Act*).

⁴ *Securities Act*, section [140.8](#).

⁵ *Securities Act*, section [140.94](#)

⁶ *Class Proceedings Act*, section [38.1](#).

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