

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
JOSEPH CALHOUN	)	<i>Hadi Davarinia</i> for the Plaintiff
	)	
Plaintiff	)	
	)	
<b>– and –</b>	)	
	)	
BARKERVILLE GOLD MINES LTD.,	)	<i>Scott Kugler</i> for the Defendants Barkerville
JAMES FRANCIS CALLAGHAN, MINAZ	)	Gold Mines Ltd., James Francis Callaghan,
DHANANI, GEOEX LIMITED, and	)	and Minaz Dhanani
PETER GEORGE	)	
	)	
Defendants	)	
	)	
Proceeding under the <i>Class Proceedings Act, 1992</i>	)	<b>HEARD:</b> November 2, 2017
	)	

**PERELL, J.**

**REASONS FOR DECISION**

[1] Pursuant to the *Class Proceedings Act, 1992*,<sup>1</sup> the Plaintiff, Joseph Calhoun, brings a motion for certification for settlement purposes of a proposed class action against Barkerville Gold Mines Ltd., James Callaghan, Minaz Dhanani, Geoex Limited, and Peter George.

[2] On July 3, 2012, Mr. Calhoun purchased 4,200 shares of Barkerville's common stock at an average price of \$1.31 per share.

[3] On March 30, 2016, Mr. Calhoun commenced a proposed class action. The action was brought on behalf of the following class:

All persons, other than Excluded Persons, who acquired Barkerville's securities during the period from and including June 28, 2012 to and including October 8, 2013 (the "Class Period") and who held some or all of those securities at the close of the market on October 8, 2013.

The "Excluded Persons" are defined as Barkerville's subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the Individual Defendants' families

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<sup>1</sup> S.O. 1992, c. C.6.

and any entity in which any of them has or had during the Class Period any legal or *de facto* controlling interest.

[4] The action asserted a claim pursuant to s. 181.3 of the Ontario *Securities Act*<sup>2</sup> (“OSC”) and equivalent provincial Securities Acts. Leave is required for this statutory claim and there is a limitation period for obtaining leave.

[5] In his proposed class action, Mr. Calhoun alleged that during the Class Period, the Defendants made misrepresentations when they released eight documents about Barkerville's mineral resource estimates for the Cow Mountain sector of the Cariboo Gold Project.

[6] On July 25, 2016, the Plaintiff delivered his motion record for leave to proceed with his statutory cause of action.

[7] On August 31, 2017, Mr. Calhoun delivered his factum for the leave motion. He argued that there was a reasonable possibility of success that the court would find that the impugned documents shared a common subject matter and could, therefore, treat them all as a single misrepresentation pursuant to s. 138.3(6) of the *OSC*, in which case it was arguable that the limitation period to file the motion record for leave to proceed would have expired on October 4, 2016, which, in turn, would mean that Mr. Calhoun's action would be timely and not statute-barred.

[8] On September 1, 2017, my decision in *Kaynes v. BP, plc*,<sup>3</sup> was released. In that case, I held that a plaintiff must advance its claim for misrepresentation within three years of the particular representation.

[9] Mr. Calhoun recognized if the decision in *Kaynes v. BP, plc*, was applied to the circumstances of his case, then his statutory claim would be statute-barred. In light of this development, the parties met to discuss settlement.

[10] The parties signed a Settlement Agreement on October 26, 2017.

[11] Under the Settlement Agreement: (a) the action will be certified for settlement purposes only; (b) Barkerville will pay \$250,000 to the class; and (c) Mr. Calhoun and the class members, excepting those who choose to opt-out, will provide a release to the Defendants.

[12] For the purposes of the consent certification, Mr. Calhoun seeks certification of the following two issues as common issues:

- (1) Did Barkerville's Class Period disclosure documents contain a misrepresentation within the meaning of the *OSA* or at common law?
- (2) Did the report released on June 28, 2012, authored by [Peter] George and issued by Geox under National Instrument 51-102, contain a misrepresentation within the meaning of the *OSA*?

[13] If the settlement is approved by the court, Mr. Calhoun proposes that the settlement funds be distributed as follows: (a) up to \$40,000 for reimbursement of Class Counsel's disbursements; (b) up to \$125,000 inclusive of taxes on account of Class Counsel's legal fees; (c)

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<sup>2</sup> R.S.O. 1990, c. S.5.

<sup>3</sup> 2017 ONSC 5172.

a cy-près payment of \$80,000 to the Investor Protection Clinic at Osgoode Hall Law School; and (d) an honorarium of \$5,000 to Mr. Calhoun.

[14] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, the court shall certify a proceeding as a class proceeding if: (1) the pleadings disclose a cause of action; (2) there is an identifiable class; (3) the claims or defences of the class members raise common issues of fact or law; (4) a class proceeding would be the preferable procedure; and (5) there is a representative plaintiff or defendant who would adequately represent the interests of the class without conflict of interest and there is a workable litigation plan.

[15] In the present case, I am satisfied that all of the criteria for certification have been satisfied and that the incidental relief should be granted.

[16] Accordingly, I grant Mr. Calhoun's motion.



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Perell, J.

Released: November 3, 2017

**CITATION:** Calhoun v. Barkerville Gold Mines Ltd., 2017 ONSC 6548  
**COURT FILE NO.:** CV-16-549792CP  
**DATE:** 20171103

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

JOSEPH CALHOUN

Plaintiff

– and –

BARKERVILLE GOLD MINES LTD., JAMES  
FRANCIS CALLAGHAN, MINAZ DHANANI, GEOEX  
LIMITED, and PETER GEORGE

Defendants

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**REASONS FOR DECISION**

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PERELL J.

Released: November 3, 2017