

Class Actions

A Summary of Class
Action Decisions

Cracking the Door Open for Victims of Foreign Abuse: The Playbook is Written

This was a proposed representative action on behalf of refugees from the State of Eritrea alleging that the defendant Nevsun Resources Ltd., a British Columbia company, used forced labour, a form of slavery, in building an Eritrean mine. The plaintiffs brought the action under customary international law on their own behalf and as a representative action on behalf of all Eritrean nationals who were forced to work at the mine.

Among other things, the defendant moved to strike the claim on the basis that: (a) it was barred by the act of state doctrine (the “Act of State Application”); (b) it was improperly based on breaches of customary international law (the “Customary International Law Application”); (c) that Eritrea is the proper forum for this proceeding; and (d) whether the action can proceed as a representative action.

The court dismissed the Act of State Application and the Customary International Law application, found that British Columbia was the proper jurisdiction, but concluded that the action could not proceed as a representative action.

The plaintiffs’ position was that they could not rely on the *Class Proceedings Act* since none of the members of the class they seek to represent were residents of British Columbia, as required by the Act. In seeking a representative order, the plaintiffs argued that there existed in British Columbia a regime of common law class action claims that operated independently from those subject to the *Class Proceedings Act*. The court rejected this submission, concluding that the representative proceeding rule had been limited to a narrow class of cases such as those alleging common statutory or collective rights (ie. aboriginal or language issues) or those seeking a common statutory declaration or remedy, remedies under a collective agreement and the like. Nevertheless, the court invited putative class members to commence separate actions to be joined together.

This decision appears to open the door to foreign plaintiffs commencing actions in Canada against parent companies for abuses in foreign countries and will put corporate Canada on notice that they may face responsibility for the actions of their subsidiaries.

Araya v. Nevsun Resources Ltd., 2016 BCSC 1856 (CanLII)

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This edition of Class Action News was produced and edited by the Class Action Department at [Koskie Minsky LLP](#)