

Mining for Legislative Gold after Bre-X: A General Commentary on the Use of Class Actions for Fraud in the Secondary Market

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Introduction

Securities are a key component of the modern market economy. Effective functioning of the securities market is based on the establishment of good faith and trust between investors and public companies. Consequently, any distortion of the truth by companies or their agents to the investing public has the potential to undermine the functioning of the securities market. To maintain economic health, countries require effective legal mechanisms to deal with cases of securities fraud; these legal mechanisms aim to minimize the damage incurred by investors, deter future fraud, and maintain the legitimacy of securities as an economic tool.

The collapse of the Canadian mining company Bre-X Minerals Ltd. ("Bre-X") left Canada with the unenviable historical distinction of being one of the nations whose regulatory system failed to prevent the "biggest gold-mining fraud in history."¹ In its aftermath, the Canadian legal system was left to clean up the wreckage caused by a case of securities fraud on an unprecedented scale.

Bre-X, a Calgary-based exploration company, was incorporated in 1988.² In January 1996, Bre-X presented the world with information claiming a gold deposit at Busang in East Kalimantan, Indonesia, with an estimated yield of 30 million ounces³ worth approximately US\$11.9 billion.⁴ Based on this information and other representations made by the company and its directors, Bre-X was transformed from a penny stock to one of the hottest securities in Canada, rising to more than \$200 a share, splitting 10:1, and climbing to an extraordinary market capitalization of US\$4.5 billion.⁵

What appeared to be one of the greatest finds in mining history proved to be a fraud in 1997.⁶ On March 26, 1997 Freeport McMoran Copper & Gold Inc. ("Freeport") found "insignificant amounts of gold" in seven core samples obtained from areas that Bre-X claimed had high concentrations of gold.⁷ An independent audit was later conducted by Strathcona Minerals Services Ltd. ("Strathcona"); this audit provided clear evidence of fraud and specifically indicated that the Bre-X samples contained gold that

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¹ Howard Schneider "A Lode of Lies: How Bre-X Fooled Everyone Amid Tales of Gold, Investors and Regulators in U.S., Canada Didn't Dig Deep Enough" *The Washington Post* (18 May 1997) H1; Peter Waldman & Jay Solomon "Gold Fraud Recipe? Bre-X Workers Saw Mine Samples Mixed" *The Wall Street Journal* (6 May 1997) A1.

² Bre-X Minerals Ltd, CANCORP Company Number 0200845. (22 February 2002) (Lexis, CANCORP Plus Database).

³ *Ibid.*

⁴ "The Markets" *The Globe and Mail* (16 January 1996) B1.

⁵ "Chronology of Indonesia's huge Busang gold find" *Reuters* (18 February 1997) (Global NewsBank); Solange De Santis & Mark Heinzl "Canada Recommends Tougher Rules for Mining Firms After Bre-X Fiasco" *The Wall Street Journal* (9 June 1998) C22.

⁶ Mark Heinzl "Bre-X, Confirming Worst Fears, Says Busang Contains Virtually No Gold" *The Wall Street Journal* (5 May 1997) C19.

⁷ *Ibid.*

did not originate from Busang.⁸ In other words, someone had "doped" the core samples with gold from another region.

Billions of dollars evaporated as Bre-X stock plummeted in value after Freeport's initial findings and Strathcona's clear evidence of Bre-X's fraud – within a week of Strathcona's report, Bre-X was delisted from the Toronto Stock Exchange.⁹

Dealing with the Bre-X aftermath was a test of the securities laws and regulations within both Canada and the United States, and exposed areas that required reform in the Canadian framework. This paper briefly examines the different approaches taken by the American and Canadian legal systems to deceptive practices in the secondary market. It also raises questions about civil liability for secondary market misrepresentations and the use of class actions in securities suits. The outcome of the findings is that there is need for legislative reform to protect secondary market participants. Legislative reform has commenced in Ontario following the passage of Bill 198.¹⁰ As well, Saskatchewan has included a statutory civil liability provision in its *Securities Act* for verbal misrepresentations.¹¹

As a final introductory note, the Canadian courts have certified the class action against Bresea Resources Ltd., and Bre-X and its insiders, but not against the brokerage firms and analysts, or engineering companies.¹² There are no appeals pending;

the Supreme Court of Canada refused leave to appeal on October 18, 2001.¹³

Background – Securities and Class Actions *The Importance of Securities Regulation and Enforcement*

To achieve an efficient capital market and attract investment in the market, a government needs to have a strong regulatory framework in place to protect investors from unfair, improper, and fraudulent practices. The 1997 paper "Legal Determinants of External Finance" concluded that "countries with poorer investor protection, measured by both the character of legal rules and the quality of law enforcement, have smaller and narrower capital markets."¹⁴ Moreover, a 1997 paper entitled "A Survey of Corporate Governance" recognized, *inter alia*, the relevance of the legal protection of investors to corporate governance.¹⁵

Rationale for the use of Class Actions

Secondary sales of shares in the public market normally involve a number of stakeholders. Class actions can effectively consolidate the common grievances of these stakeholders with two principal procedural benefits: an increase in "judicial economy" and an improvement of "access to justice."¹⁶ Judicial economy is the efficiency that the court system and individuals gain by consolidating a large number of claims into

⁸ Bertrand Marotte "'The biggest mining fraud ever': Bre-X mine contains no gold 'of economic interest,' report says" *The Ottawa Citizen* (5 May 1997) A1.

⁹ *Supra* note 5; Mark Heinzl & Larry M. Greenberg "Bre-X Stock Collapses 97% to Pennies As Heavy Trading Swamps Exchange" *The Wall Street Journal* (7 May 1997) A3; Mark Heinzl "Bre-X Shares Are Delisted in Toronto As Police Map Their Probe of Gold Claim" *The Wall Street Journal* (8 May 1997) A4.

¹⁰ Bill 198, *Keeping the Promise for a Strong Economy Act (Budget Measures)*, 2002, 3rd Sess., 37th Parl., Ontario, 2002, s. 185 [Bill 198] (Part XXVI); Government of Ontario, News Release, "Eves government takes action to protect public confidence" (9 December 2002).

¹¹ *Securities Act*, S.S. 1988, S-42.2, s.138.2.

¹² *Carom v. Bre-X Minerals Ltd.* (2000), 51 O.R. (3d) 236, 196 D.L.R. (4th) 344 (C.A.), leave to appeal to S.C.C. refused, [2000] S.C.C.A. No. 660 (Q.L.).

¹³ *Ibid.*

¹⁴ Rafael LaPorta et al. (1997) Legal Determinants of External Finance. *Journal of Finance*, 52(3), 1131-1150 at 1131.

¹⁵ Andrei Shleifer & Robert W. Vishny. (1997) A Survey of Corporate Governance. *Journal of Finance*, 52(2), 737-783.

¹⁶ *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, 2001 SCC 46 at paras. 27-28 [*Western* cited to S.C.R.].

one claim, thereby saving time, effort, and cost for all parties involved. By jointly entering into a class action, plaintiffs also achieve improved access to justice. Multiple economic, social, and/or psychological barriers often deter plaintiffs from contemplating legal action; class actions increase the ability of plaintiffs to apply to the courts by distributing any of these potential barriers across the group of plaintiffs. The third and final benefit of class actions is that they can constitute a powerful force in deterring wrongdoing.¹⁷

It can be argued that the only feasible method for individual investors to obtain a remedy for misrepresentations in the secondary market sale of shares is by class actions. Vern Krishna, referring to Bre-X, states:

[I]n theory, investors can bring individual legal actions against the broker-dealers on the basis that they were deliberately or negligently misled by the dealers and suffered substantial financial losses. Any such lawsuit would require substantial financing and would likely drag on for years. Given the ultimate uncertainty of litigation, the protracted timetable, and substantial costs, which would include a demand by the broker-dealers for security for costs, stand-alone lawsuits are a theoretical and hollow remedy for anyone other than large institutions The decision of the Superior Court of Justice not to certify the class effectively immunizes the broker-dealers from their

participation in the largest ever securities fraud in Canada.¹⁸

The Canadian Legal Framework

In Canada, class actions can be brought either as representative actions or pursuant to provincial class proceedings acts. The Bre-X class action was certified under Ontario's *Class Proceedings Act* ("CPA").¹⁹ The section of significance to class action certification in Ontario is s. 5(1), which states:

5. (1) The court shall certify a class proceeding on a motion under section 2, 3, or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the

¹⁷ *Western, ibid.* at para. 29.

¹⁸ Vern Krishna, "Insider Trading" (1998-99) 9 Can. Curr. Tax 106 at 106-107. Costs are a true risk and were seriously considered by the Canadian Bre-X plaintiffs in their decision to dismiss Nesbitt Burns Inc. and Egizio Bianchini from the proposed class action. Sandra Rubin of *The National Post* writes: "Harvey Strosberg, leading the Canadian class action, said the arrangement means his lead plaintiffs no longer have to worry about being hit with a huge bill for costs should their case against Nesbitt fail. The decision was a difficult one, but it removes the risks of litigation... and will allow the remaining action to be more aggressively pursued." Sandra Rubin, "Nesbitt off the hook in Bre-X class action: To pay costs" *The National Post* (13 November 1999) D3.

¹⁹ S.O. 1992, c.6.

common issues for the class, an interest in conflict with the interests of the other class members.²⁰

The above criteria must be met for a class action to be certified. It should be noted that the CPA does not create any new causes of action. The cause of action must be found in the common law or under statute but, as will be discussed, some causes of action function better as class actions than others. Generally, to be certified as a class action, a cause of action with more common issues and fewer issues to be considered individually is preferable.

Provinces regulate securities by their respective securities commissions and statutes.²¹ In terms of civil remedies, provincial securities statutes and some federal statutes, such as the *Canada Business Corporations Act*²² provide statutory causes of action to individuals in particular circumstances. For instance, under Ontario's *Securities Act*, misrepresentations made in a prospectus (the primary market) will trigger civil liability under the following provision:

130. (1) Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution or distribution to the public shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against,

(a) the issuer or a selling security holder on whose behalf the distribution is made....²³

To date, except in Saskatchewan, there is no similar statutory civil remedy in force for misrepresentations made in the secondary market.²⁴ However, it is expected that Ontario will amend its *Securities Act*²⁵ to add a statutory civil liability remedy for misrepresentations made in the secondary market.²⁶ This amendment, introduced under Bill 198, received Royal Assent on December 9, 2002, and it will come into force on a day to be named by proclamation of the Lieutenant Governor.²⁷

Other statutes, such as the federal *Competition Act*, can also give rise to a cause of action for shareholders.²⁸ The relevant parts of the *Competition Act* are s. 52(1) (offences in relation to competition: false or misleading representations) and s. 36(1) (recovery of damages for the breach of any provision in Part VI including s. 52(1)) state:

36. (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI,... may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of

²⁰ *Ibid.*

²¹ See e.g. *Securities Act*, R.S.A 2000, c. S-4; *Securities Act*, R.S.B.C. 1996, c.418; *Securities Act*, R.S.O. 1990 c.S.5 [Ontario *Securities Act*].

²² R.S.C. 1985, c.C-44.

²³ Ontario *Securities Act*, *supra* note 21.

²⁴ *Supra* note 11.

²⁵ Ontario *Securities Act*, *supra* note 21.

²⁶ *Supra* note 10.

²⁷ *Ibid.*

²⁸ R.S.C. 1985, c.C-34.

proceedings under this section....

52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect....²⁹

Another option for shareholders is to rely on the common law to provide a basis for liability through the use of the tort of conspiracy, negligent misrepresentation, and/or fraudulent misrepresentation. However, there are significant individual issues, such as proving reliance in a misrepresentation, which may bar an action from being certified. In *Arsene v. Jacobs*, Riley J. quotes Lord Chelmsford's decision in *Hallows v. Fernie* (1868), L.R. 3 Ch. 467 where the court decided to bar a class action based on fraud:

It was held, *inter alia*, that such a suit could not be maintained by the plaintiff on behalf of all the other shareholders.... On this point Lord Chelmsford, L.C., states at p. 471:

The Plaintiff's case being founded on alleged misrepresentations he could not properly make himself the representative of the other shareholders and file this bill on their behalf, as well as his own. For the case of each person who has been deceived by a misrepresentation is peculiar to himself, and must depend upon its own circumstances....³⁰

The American Legal Framework

In the U.S., Rule 23 of the *Federal Rules of Civil Procedure* sets out the requirements for a class action; the general criteria (i.e., numerosity, commonality, typicality, and adequacy) for a class action are set out in Rule 23(a) and (b):

Rule 23. Class Actions

(a) Prerequisites to a Class Action.

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class,

²⁹ *Ibid.*

³⁰ *Arsene v. Jacobs* (1963), 37 D.L.R. (2d) 254 at 256 (Alta. S.C.), aff'd (1964), 44 D.L.R. (2d) 487 (Alta. S.C. (A.D.)).

thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
 (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action....³¹

These criteria, although similar to the Canadian ones, are generally more restrictive.

The U.S. has an approach to civil remedies in the securities arena that is distinct from Canada's approach. Securities are regulated at the federal and state level. The statute centrally important to this paper is the *Securities Exchange Act of 1934* ("1934 Act").³² In addition to the federal law, there are the common law claims of negligent and fraudulent misrepresentation that are applied using the applicable state law. The individual states also have securities regulations (also referred to as "Blue Sky Laws").

The 1934 Act regulates trades of securities subsequent to their initial distribution "to insure the maintenance of fair and honest markets."³³ The 1934 Act enables the Securities and Exchange Commission ("SEC") to create "such rules and regulations as the Commission [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors...."³⁴ The SEC promulgated Rule 10b-5 under s. 10(b) of the 1934 Act; Rule 10b-5 states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
 (a) To employ any device, scheme, or artifice to defraud,
 (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
 (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.³⁵

These provisions effectively create a federal civil statutory cause of action for wrongdoing in relation to secondary market misconduct, something that is not present in Canada.

Furthermore, reliance can be presumed in Rule 10b-5 cases. This permits the representative plaintiffs to overcome the often difficult and individual element of reliance in a class action. The presumption arises from the "fraud on the market" theory.

³¹ FED. R. CIV. P. 23. (U.S.).

³² 15 U.S.C. § 78a (2002).

³³ *Ibid.* at § 78b.

³⁴ *Ibid.* at § 78j(b).

³⁵ 17 C.F.R. § 240.10b-5 (2002).

The theory was explained by the Supreme Court in *Basic Inc. v. Levinson*:

We turn to the question of reliance and the fraud-on-the-market theory. Succinctly put:

"The fraud on the market theory is based on the hypothesis that, in an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business.... Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements.... The causal connection between the defendants' fraud and the plaintiffs' purchase of stock in such a case is no less significant than in a case of direct reliance on misrepresentations." *Peil v. Speiser*, 806 F.2d 1154, 1160-1161 (CA3 1986).

... Because most publicly available information is reflected in market price, an investor's reliance on any public material misrepresentations, therefore, may be presumed for purposes of a Rule 10b-5 action.³⁶

Therefore, based on "fraud on the market," security prices reflect the market's collective interpretation of the public information. Hence, a single investor's security portfolio will be affected by misrepresentations even if that individual investor does not access or comprehend the information because an efficient market as a

whole will access, comprehend, and act on the information. To apply this theory, as stated in *Newberg on Class Actions*, five required elements must be present:

- (1) that the defendants made public misrepresentations, (2) that the misrepresentations were material, (3) that the stock was traded on an efficient market, (4) that the misrepresentations would induce a reasonable, relying investor to misjudge the value of the stock, and (5) that the plaintiff traded in the stock between the time the misrepresentations were made and the time the truth was revealed.³⁷

The combination of the "fraud on the market" theory and the statutory cause of action under Rule 10b-5 has created an effective system for bringing securities class actions forward. In fact, some say it is too effective.³⁸ The "fraud on the market" theory removes one key individual issue – reliance. Without the theory, each individual would likely have to establish that she relied on the specific piece of information. With the "fraud on the market theory," this is unnecessary, and the case focuses on the common issues surrounding the conduct of the issuer.

From Bre-X to Bill 198

When the Bre-X scandal broke, the case law and statutory instruments made it clear that it would be difficult for investors who purchased shares in the secondary market to receive any material remedy. In the Bre-X class action, the only action certified was the claim against Bresea Resources Ltd., and Bre-X and its insiders.³⁹ Despite this

³⁶ 99 L. Ed. 2d at 215-218 (S.C. 1988).

³⁷ Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, 7 Newberg on Class Actions § 22:61 (4th ed.) (January 2003) (WL).

³⁸ Janet C. Alexander, "Do the Merits Matter? A Study of Settlements in Securities Class Actions" (1991) 43 Stan. L. Rev. 497; James Bohn & Stephen Choi, "Fraud in the New-Issues Market: Empirical Evidence on Securities Class Actions" (1996) 144 U. Pa. L. Rev. 903; Elliot J. Weiss & John S. Beckerman, "Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions" (1995) 104 Yale L.J. 2053.

³⁹ *Supra* note 12.

result, Winkler J. was correct in not applying the "fraud on the market" theory in the Bre-X case.⁴⁰ This may have supported certification of the class action against the brokers but simply adopting the theory could be the legal equivalent of opening Pandora's Box (as the proper framework and background necessary for its application are absent in Canada). The inability of the judiciary to provide relief made it apparent that there was a legislative gap that deprives protection to investors in the secondary market for securities.

In light of the Bre-X decision it is clear that Bill 198, the proposed amendment to Ontario's *Securities Act*, is a welcome addition to Ontario's legislation.⁴¹ Under Bill 198, Ontario's *Securities Act* will have a statutory civil liability remedy for misrepresentations in the secondary market, further protecting the interests of investors and enhancing their confidence in the fairness of the system – two ingredients that are essential to any successful economy.⁴²

Prior to the introduction of Bill 198, reports by the Canadian Securities Administrators ("CSA Report") and the Toronto Stock Exchange ("TSE Report") also recommended amendments to securities legislation that would add a statutory civil liability remedy for misrepresentations in the secondary market.⁴³ The proposed amendment in Bill 198 generally follows the recommendations of the CSA Report. The key features of the proposed amendments, as listed in the executive summary of the CSA Report, are summarized as follows:

- a) Scope of remedy – Secondary market investors will have a limited

- right of action to sue;
- b) Reliance – Investors will not have to prove their reliance on the misrepresentation;
- c) Standard of proof and potential defences – Various defences will be made available to defendants based on their responsibility for disclosure;
- d) Liability cap – The liability cap will vary depending on the category of the defendant;
- e) National application of liability cap;
- f) Screening mechanism – The plaintiffs must obtain leave of the court to commence an action. The court will consider whether the claim was brought in good faith, and has a reasonable possibility of success;
- g) Court approval of settlement agreements;
- h) Proportionate liability – An exception is made for misrepresentations made knowingly or failure to make timely disclosure, in such situations the liability will be joint and several.⁴⁴

The CSA Report also discussed the issues regarding the belief that a statutory civil remedy would encourage "strike suits."⁴⁵ The CSA Report referred to the CSA Civil Remedies Committee who "in 1998 had been largely persuaded by the Allen Report's [TSE Report's] conclusion that the litigation environment in Canada differs sufficiently from that in the United States that strike suits are not likely to be a problem in Canada."⁴⁶

⁴⁰ *Carom v. Bre-X Minerals Ltd.* (1998), 41 O.R. (3d) 780, 41 B.L.R. (2d) 246 (Gen. Div.).

⁴¹ *Ontario Securities Act*, *supra* note 21; Bill 198, *supra* note 10.

⁴² *Ibid.*

⁴³ Canadian Securities Administrators, "Proposal for a Statutory Civil Remedy for Investors in the Secondary Market and Response to the Proposed Change to the Definitions of 'Material Fact' and 'Material Change'" (2000) 23 O.S.C. Bull. 7383 [CSA]; Committee on Corporate Disclosure (Toronto Stock Exchange), *Responsible Corporate Disclosure: A Search for Balance: Final Report* (Toronto: Toronto Stock Exchange, 1997) [TSE].

⁴⁴ CSA, *ibid.* at 7383-7384.

⁴⁵ See also *Epstein v. First Marathon Inc.* (2000), 2 B.L.R. (3d) 30, 41 C.P.C. (4th) 159 (Ont. Sup. Ct.).

⁴⁶ CSA, *supra* note 43 at 7389.

The TSE Report stated that, "the combination of statutory civil liability, as proposed, with class actions and Canadian procedural rules would not result in a flood of lawsuits such as experienced in the U.S."⁴⁷ The TSE Report highlighted differences regarding the use of jury trials, cost rules, and Rule 10b-5 generally in comparison to the rules as set out in the proposed statutory provision.⁴⁸ As discussed, the CSA Report also recommends court approval of settlement agreements and a screening provision in order to discourage the filing of frivolous actions. Through the use of reasonable safeguards, these proposed amendments strike the right balance between protecting investors and businesses.

Conclusion

We have seen firsthand that neither the common law nor legislation sufficiently protects the rights of secondary investors. Legislative change, as proposed by the CSA Report and embodied in Bill 198, will act to correct this flaw.⁴⁹ Without this change, there will be few remedies for investors wronged in the secondary market, the deterrence of wrongdoing will not be significant, and confidence in the securities markets in Canada will suffer, harming our ability to sustain a healthy economy and to compete internationally.

⁴⁷ TSE, *supra* note 43 at 26.

⁴⁸ TSE, *supra* note 43 at 27.

⁴⁹ CSA, *supra* note 43; Bill 198, *supra* note 10.