

Standing room only: a “person aggrieved” under s.273 of the BVI Insolvency Act 2003

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In a judgment handed down on 15 April 2025, *Stevanovich v Matthew Richardson and another (as Joint Liquidators of Barrington Capital Group Ltd (in Liquidation))* [2025] UKPC 18, the Judicial Committee of the Privy Council (the “**Board**”) has given important guidance on the test to be applied by the courts in the Eastern Caribbean Supreme Court in determining whether a person who challenges a decision of liquidators, pursuant to section 273 of the BVI Insolvency Act 2003 (the “**IA**”), is a “person aggrieved” and thus has standing to bring the application. This was the first appeal reaching the Board from the Court of Appeal of the British Virgin Islands concerning the meaning and scope of section 273 of the IA¹.

Section 273 of the IA provides:

“A person aggrieved by an act, omission or decision of an office holder may apply to the court and the court may confirm, reverse or modify the act, omission or decision of the office holder.”

The appeal was brought by Mr Stevanovich, who had applied under section 273 for the reversal of the decision of the liquidators of BVI company Barrington Capital Group Ltd (the “**Company**”) to admit a claim brought by a Chapter 11 Bankruptcy Trustee (the “**Claim**”) which rendered the Company insolvent.

Both the BVI Commercial Court and Court of Appeal held that Mr Stevanovich lacked standing under section 273, as he was not directly affected by the exercise of a power given specifically to the liquidators.

The Board noted that the IA offers no definition of “person aggrieved” and took guidance from the decision of the UK Supreme Court in *Brake v The Chedington Court Estate Ltd* [2023] UKSC 29; [2023] 1 WLR 3035 in which Lord Richards JSC clarified the approach to be taken in determining who may be considered as a person aggrieved under UK insolvency legislation.

The Board made the following findings:

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- The category of persons “directly affected” by a liquidators’ decision encompasses third parties or persons other than creditors whose rights or interests arise specifically out of the liquidation or bankruptcy. Where those rights or interests do not in any way depend on the company being in liquidation, standing will not have been made out.
- The question of legitimate interest in the relief sought is the starting point of the inquiry. This calls for an assessment of all relevant factors gleaned from the context in which the issue arose.
- Mr Stevanovich does not claim to be a creditor or a member of the company. He is a former sole director. He therefore needed to demonstrate that the decision of the liquidators directly affects his rights or interests and arises from powers conferred on liquidators.
- Proceedings have been instituted by the liquidators against Mr Stevanovich for fraudulent trading and misfeasance. They allege that Mr Stevanovich contravened the IA and otherwise breached his fiduciary and other duties rendering him liable to contribute to the Company’s assets. It is not open to Mr Stevanovich to use the section 273 procedure to challenge the decision of the liquidators to bring those proceedings. The ability or power of a liquidator to institute such proceedings is expressly provided for under the IA.
- The authorities show that the class of persons who may be considered a “person aggrieved” is not exhaustive. Who qualifies for the purpose of standing depends on an examination of all the factors which fall to be considered in any particular case. This examination will include an assessment of the capacity in which the applicant applies.
- The fact that the applicant is a creditor or a bankrupt/former bankrupt (as was the case in Brake) does not suffice if it is shown that the application is not being made in that capacity.
- Another factor which would carry significant weight, though not determinative, in respect of a third party applicant, is the availability of an alternative avenue of challenge.
- In examining the factors, one of the questions to be resolved is whether the Claim arises from the exercise of powers conferred on liquidators which are peculiar to the insolvency regime. The power of a liquidator to admit claims is provided for under sections 208–215 IA. It is a power conferred on liquidators which is peculiar to the insolvency regime. Mr Stevanovich challenged the admission of the Claim which was being pursued by the sole creditor of the Company.
- Another aspect of the inquiry is to determine whether the decision of the liquidators admitting the Claim directly affects Mr Stevanovich’s rights or interests. The liquidators contended that Mr Stevanovich is not directly affected by their decision to admit the Claim. If he succeeds in defending the proceedings brought against him, the admission of the Claim by the liquidators does not matter because he would have no liability to the Company. Conversely, were the proceedings not brought against Mr Stevanovich, the rights or interests of Mr Stevanovich would similarly not be affected at all. He would be a stranger to the liquidation and would have no standing to challenge the admission of the Claim, as no right or interest of his would be affected one way or the other.
- Where an applicant has an alternate avenue of redress, it would not be appropriate without more to allow a challenge under the procedure provided under section 273 in circumstances where no rights or interests directly affecting the administration of an insolvent estate are affected.

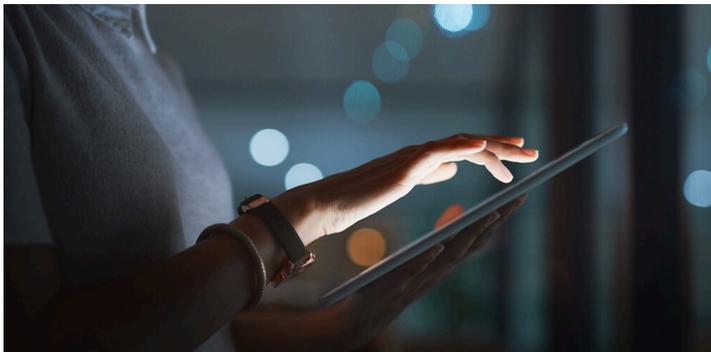
The Board therefore concluded that Mr Stevanovich had not shown that his interest is directly affected by the liquidators' decision to admit the Claim. Accordingly, he is not a "person aggrieved" for the purposes of section 273 of the IA and lacks standing to pursue his challenge.

The judgment is an important clarification on the test for determining whether the section 273 remedy is available to those aggrieved by a liquidators' decisions. Careful consideration needs to be given on whether a party qualifies for the remedy, if they cannot bring an application as a creditor or shareholder of the company in liquidation, and this judgment makes the law in the BVI clear on that question.

1 Carey Olsen acted for the successful liquidators in Stanford v the Joint Liquidators of Chesterfield United Inc (BVIHCMAP2017/0019), heard in the Eastern Court of Appeal in 2017 and referred to at [21] of the Board's judgment. See further: Are you a person aggrieved? Critical features in contesting | Carey Olsen.

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