

# Mining Disclosure in British Columbia

## WHAT YOU NEED TO KNOW

**Monday, April 8, 2024**

Workshop with the  
BC Securities Commission



**BC Securities  
Commission**  
Invest Right



1

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2

2




## Today's Presenters


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3

3



## What we will discuss today

High level information you need to know when making disclosure about mineral projects – the principles of disclosure

The critical elements of NI 43-101 and Form 43-101F1 that you need to keep in mind for all disclosure

Some of the most common disclosure problems we see, and how we suggest you can avoid them

A summary of information about what's going on in disclosure space

4

4



## Key takeaways

- Why NI 43-101 exists, & what to consider when disclosing information about a mineral project
- NI 43-101 is principle-based; not every circumstance is detailed in the rule
- NI 43-101 is just **a part** of Securities Law
- All the regulators try to provide guidance whenever we can, & share interpretations of what we see via staff notices, short courses, calls etc.
- Feel free to reach out and contact us to ask questions or clarify disclosure requirements
- **When in doubt: read NI 43-101, Form 43-101F1, & Companion Policy 43-101CP**

5

5



## Today's agenda:

Regulatory Landscape	9:00 to 10:00
Core Principle of NI 43-101: Qualified Person	10:20 to 11:00
Disclosure: What Counts & Common Problems	11:00 to 11:45
Core Principle of NI 43-101: Technical Report	1:00 to 1:45
Deep Dive into Technical Report plus Tips & Tricks	1:45 to 2:10
Other Elements of Securities Law	2:10 to 2:30
Secondary Market Liability et al.	2:50 to 3:30
How to Navigate a Disclosure Review	3:30 to 3:50
What's Next for Mineral Project Disclosure	3:50 to 4:15
Q&A	4:15 to 5:00

6

6

# Regulatory Landscape



7

7



## Canadian Securities Law

**Securities Laws exist to protect investors (the public) from:**

- Unfair, Improper, or Fraudulent Practices\*; and
- Foster Fair & Efficient Capital Markets

**This is done by requiring Companies (Issuers) to provide, in specific filings, disclosure that is:**

- Consistent;
- Comparable; and
- Decision-useful information

\* In this case, "Practices" means disclosure

8

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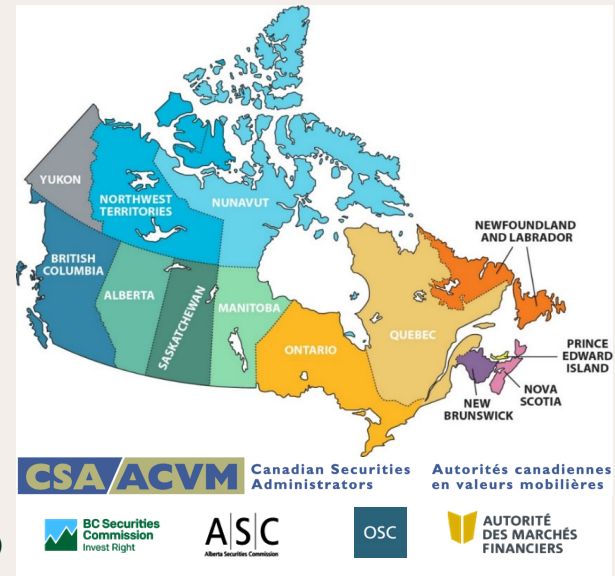
## Canadian Regulators

### 13 Provincial/Territorial Agencies

- Report to provincial or territorial governments
- Generally self-funded
- British Columbia, Alberta, Ontario, & Quebec regulate majority of mining issuers
- Issuers have a “principal regulator”

### Canadian Securities Administrators (“CSA”)

- Umbrella organization
- Role is to coordinate & harmonize
- Develop National Instruments (i.e. NI 43-101)



9

## Why do we have mining disclosure rules?

### Mining is capital intensive and risky

- Companies need access to risk capital
- Investors rely on company information
- Mining has numerous intrinsic risks
- Being misled is not an acceptable risk

### We regulate disclosure to:

- Protect investors
- Maintain integrity of capital markets

*Nothing happens without money and confidence!*

### Gold From Water (and Other Mining Scams)

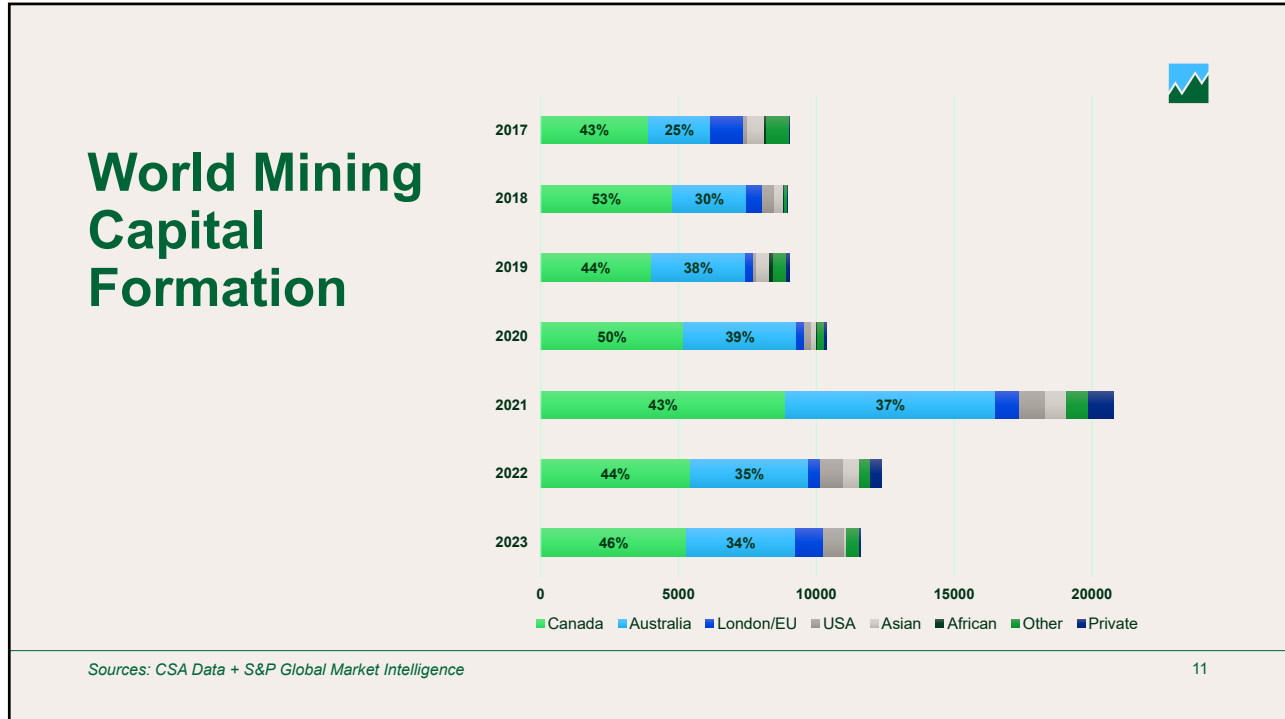


Nevada Bureau of Mines and Geology  
Special Publication 22

*Once public confidence is lost it is very hard to get it back*

10

10



11

# Disclosure Standards before NI 43-101

### National Policy No. 22

*Use of Information and Opinion RE Mining and Oil and Properties By Registrants and Others (In reports, letters or other publications)*

- Standards included in NP No. 2-A
- Name information sources and opinions by reference to a person or a publication
- Technical data and opinions in writing and by a 'qualified' engineer, geologist, prospector
- Persons making a report or offering opinions must disclose 'conflicting' financial interests
- Quote facts & opinions verbatim and not out of context Omission of unfavorable facts is misleading

### National Policy No 2-A

*Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties To Canadian Provincial Securities Administrators (accompanying a prospectus)*

- Reports must be engineering documents
- Professionally affiliated authors must affix seal
- Accepted with a prospectus & only if by a 'qualified' engineer, geologist or prospector with three years practical experience
- When proceeds go to the 'property' the 'author' must be free of any association with the issuer
- Author must provide consent for use in prospectus.
- Reports must include a dated, signed authors' certificate

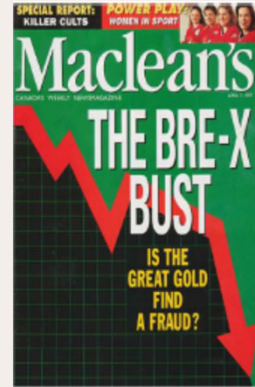
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## Canadian Disclosure Legacy

The VSE & ASE dominated by resource-focused 'venture' stage issuers through 1970's, 80's and 90's

A very colourful history:

- 1979 Brown Farris & Jefferson study
- 1980-81 New Cinch Uranium
- May 1987 Forbes Article "Scam Capital of the World"
- 1989 BuMax/ Metaxa Gold
- 1996 Cartaway Resources
- 1997 Bre-X
- 2005 Southwestern Resources



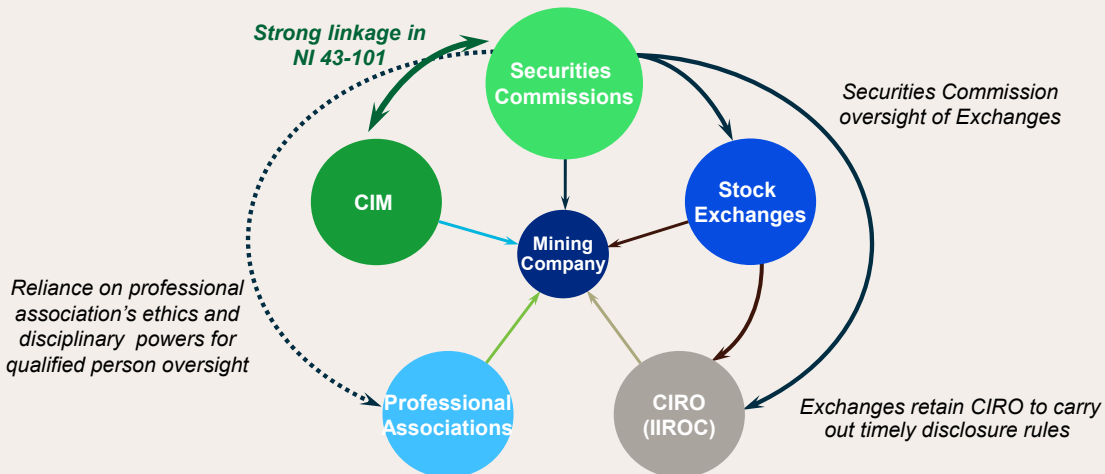
*If anyone tries to peddle you anything listed on the Vancouver Stock Exchange, bang up fast. There isn't any gold in Vancouver, but there's plenty of brass.*

**Scam capital of the world**

13

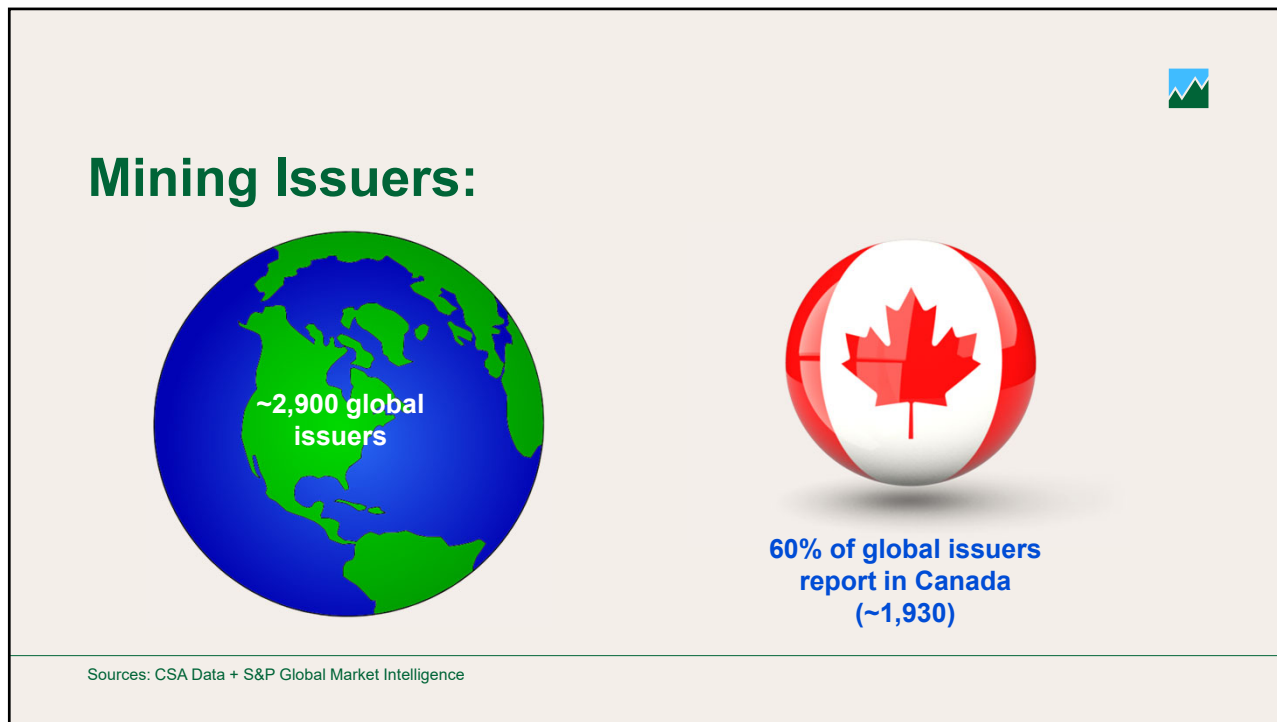
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## Mining Securities Regulatory Framework

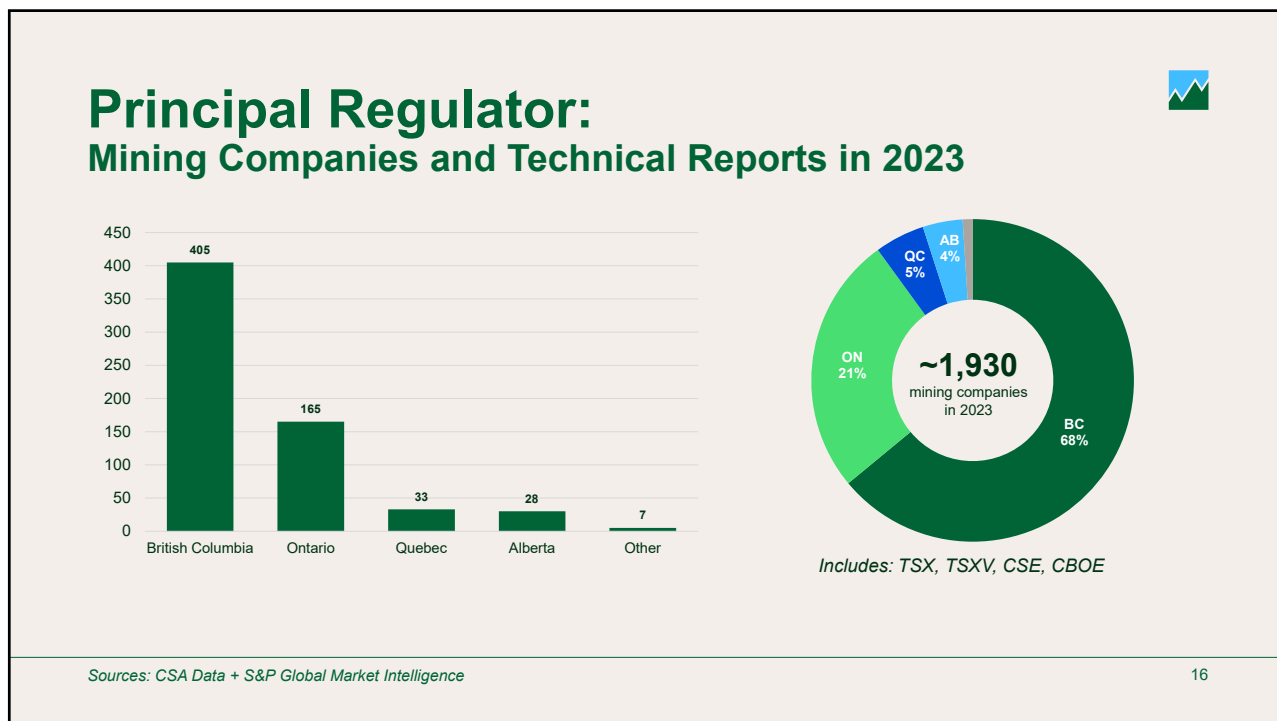


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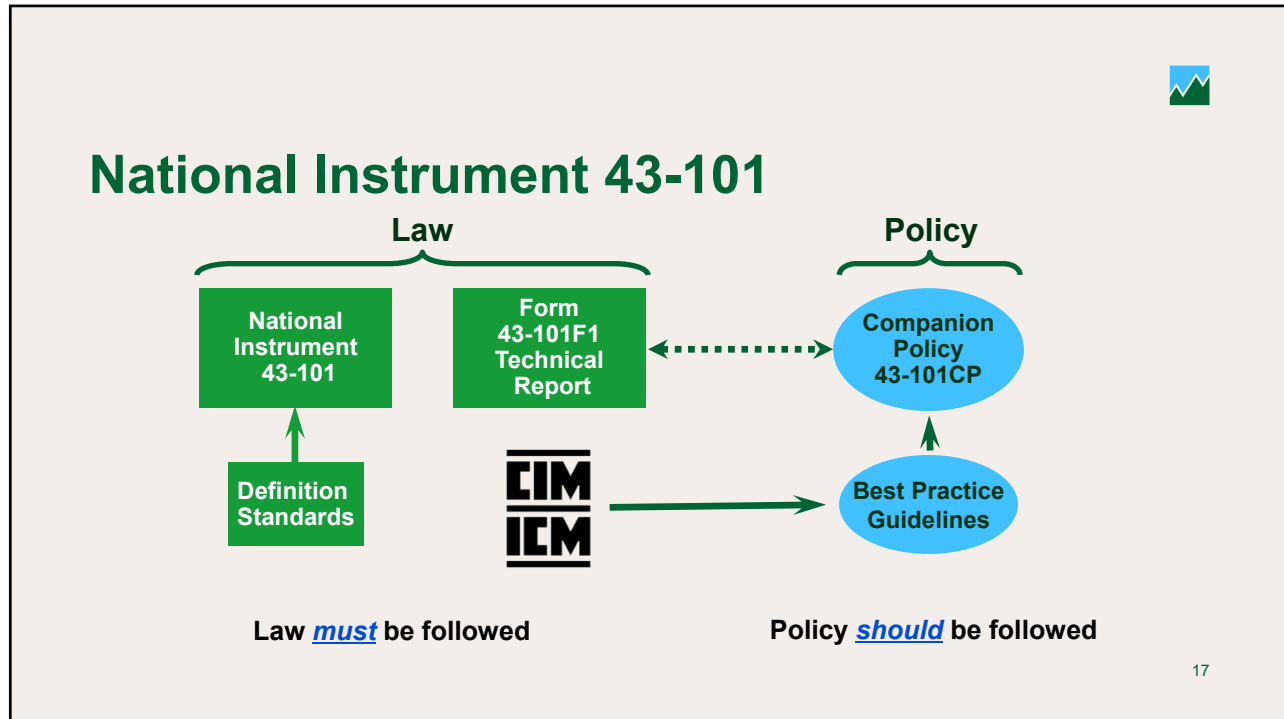


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16





17

**NI 43-101: Its' Objective**

A disclosure rule to enhance accuracy & integrity of mining disclosure through national standards

**It requires that public reporting of mineral project information is:**

- Balanced & not misleading
- Understandable to a reasonably person
- Based on reliable & verified data
- Based on reasonable assumptions which are clearly explained
- Uses standardized terms & definitions
- Unbiased & identifies the potential risks & uncertainties
- Signed off by a professional (QP) who takes responsibly for the information

18

18



## NI 43-101: What it is Not

**It is not a brand**

**It is not a guarantee of good work**

- It places an obligation on the issuer to have work done by a QP

**It is not a cookbook for mineral estimation**

- The rule sets **disclosure standards**, not estimation practices

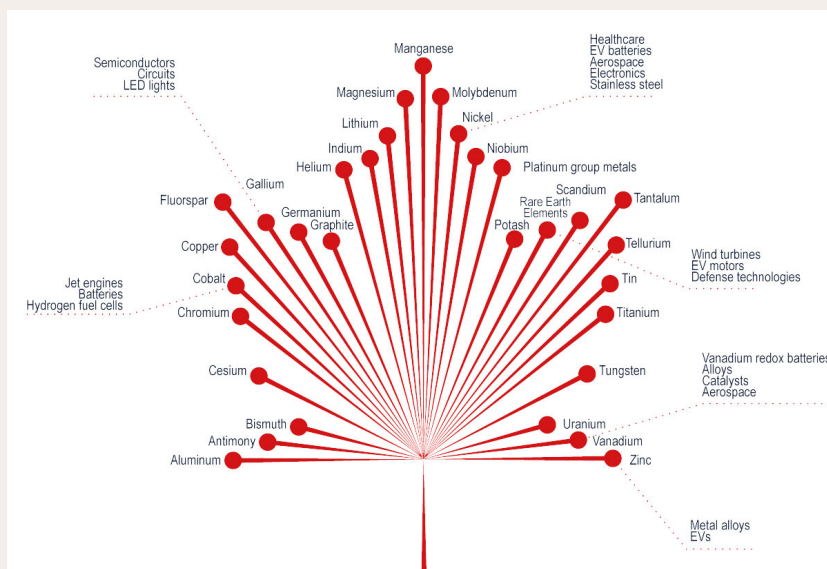
**It is not a vetting process by a regulatory agency**

- Just because a technical report or news release is filed does not mean it is compliant
- It is an issuer's responsibility to comply

19

19

## Current Events: Canadian Critical Minerals



Source: Canadian Critical Minerals Strategy December 2022

20

20



## Canadian Critical Mineral Strategy

- Full strategy rolled out December 9, 2022
- 31 minerals are listed, with six prioritized including:
  - Lithium
  - Graphite
  - Nickel
  - Cobalt
  - Copper
  - Rare Earth Elements
- Available at: [www.canada.ca/en/campaign/critical-minerals-in-canada/canadian-critical-minerals-strategy.html](https://www.canada.ca/en/campaign/critical-minerals-in-canada/canadian-critical-minerals-strategy.html)

21

21



## Cautionary note:

- With a budgetary commitment from the Government of Canada to support the advancement of the Critical Minerals Strategy it is easy **to promote** such projects
- We have seen numerous “**overly promotional**” disclosure statements in corporate presentations, investor materials, etc. as this strategy advances – think everything *Tesla Gigafactory* in 2016 to 2018

22

22

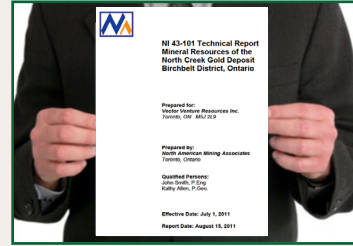
## Core Principles of NI 43-101



**Qualified Person**



**CIM Definition Standards  
&  
CIM Best Practices**



**Technical Report**

23

23

## Key Resources

- **BCSC** at: [www.bcsc.bc.ca](http://www.bcsc.bc.ca) specifically [www.bcsc.bc.ca/mining](http://www.bcsc.bc.ca/mining)
- **SEDAR+** (System for Electronic Document Analysis and Retrieval) at: [www.sedarplus.ca](http://www.sedarplus.ca)
- **CIM** at <https://mrmr.cim.org/>
- **CRIRSCO** (Committee for Mineral Reserves International Reporting Standards) at: [www.cirisco.com](http://www.cirisco.com)
- **Dentons** at: [www.dentons.com](http://www.dentons.com)

24

24

## Core Principle: The Qualified Person



25

25

## What is the Qualified Person?

- What are Experts?
- What is someone Acting as the Qualified Person – definition
- What is the role of the Qualified Person?
- What are my responsibilities and to whom?
- What could happen?



26

26



## Experts for Secondary Market Disclosure

Securities legislation in Canadian provinces and territories gives certain rights to parties that invest in the secondary market to sue for damages due to a “misrepresentation” made by an “expert”

- “expert” means a person whose profession gives authority to a statement made in a professional capacity by the person including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist, or lawyer...

An expert may be liable for a “misrepresentation” in an Issuer’s disclosure documents where the:

- Misrepresentation is also contained in the expert’s report, statement, or opinion
- Issuer’s disclosure document quotes from the expert’s report, statement, or opinion
- Expert gave written consent for the use the report, statement, or opinion

**Expert: “With great power comes great liability”**

**The Qualified Person definition are additional requirements to take responsibility for scientific & technical information about mineral projects**

27

27



## Qualified Person Definition

s. 1.1 of NI 43-101

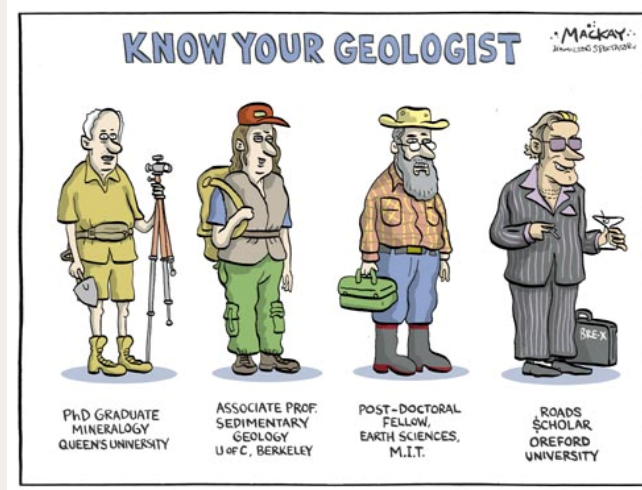
“**Qualified Person**” means an individual who:

- a) is an engineer or geoscientist with a university degree, or equivalent accreditation, in an area of geoscience, or engineering, relating to mineral exploration or mining;
- b) has at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these, that is relevant to his or her professional degree or area of practice;
- c) has experience relevant to the subject matter of the mineral project and the technical report; **and**
- d) is in good standing with a professional association

28

28

## There are many types of Geo's (& Eng's)



Source: Graeme  
Mackay Editorial  
Cartoons

29

29

## What is my role acting as the Qualified Person?

- The role of the Qualified Person is a core principle of NI 43-101
- The Qualified Person acts a **gatekeeper** for the public taking responsibility for the scientific & technical disclosure about a mineral project; the public & their advisors are not usually mining experts
- A gatekeeper is charged with ensuring that disclosure is based on reliable information, reflects sound professional opinions formulated having applied industry best practices & using consistent terms
- This expertise of the gatekeeper is to level the playing field by providing information so that there is opportunity to compare projects and inform the public's investment decisions; this provides confidence in the capital markets

30

30



## I'm a Professional Geoscientist/Engineer

- Registration as a P.Geo./P.Eng. is one step to acting as a QP
- Each jurisdiction of Canada has professional association(s) that govern (part of law) being a professional geoscientist
- Titles such as geoscientist, geologist, geochemist, geophysicist, engineer etc. are '*restricted use*' meaning you need to be licensed to call yourself one
- CSA guidance is to consider what it means to follow your code of ethics, and adhere to applicable laws in the jurisdiction you are operating

31

31



## Being the Qualified Person is a Self-Test

The CIM Definition Standards provides an additional requirement, stating:

- *"The Qualified Person should be clearly satisfied that they could face their peers and demonstrate competence and **relevant experience in the commodity, type of deposit and situation under consideration.**"*

"Back of a napkin" knowledge is not likely what your peers would accept

- You should only act as the Qualified Person where your peers would agree with your logic and judgement and knowledge in areas that you have trained to practice and have achieved skill in as a professional

32

32



## The Path to Acting as a Qualified Person

Recognized professional designation in recognized professional association

- Following a Code of Ethics is a part of being a Qualified Person

Exposure, Practice, Learning, and Gaining Professional Competence → these activities develop “Expertise”

- Can be done by following by keeping current
- Actively maintaining knowledge and competency
- Due Diligence

Self-test that includes, in addition to professional registration

- Specific education, that underlies area of practice
- Specific level of experience as a professional & relevant to the subject matter or the project/report (5 years)

33

33

## The quick start 4 “E”s of a Qualified Person

**Expertise**

Proficient with the disclosure obligations of NI 43-101 and an understanding of the CIM Best Practice Guidelines

**Education**

Geoscientist or Engineer with a university degree related to exploration or mining

**Ethics**

Professional association recognized by law in Canada, or listed in Appendix A

**Experience**

At least 5 years' experience in exploration or mining, and relevant experience to subject matter

34

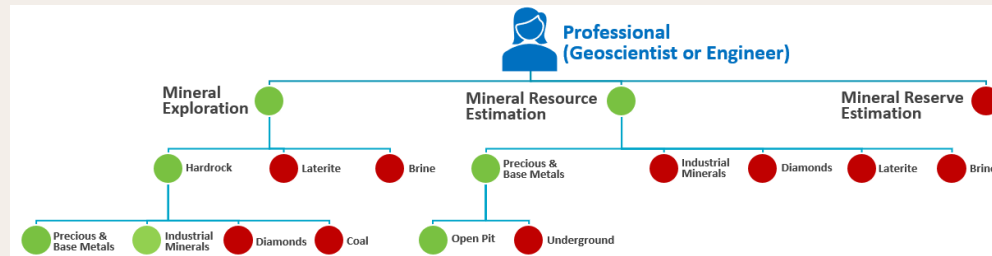
34



## Do you have the *Relevant Experience* to ACT?

**Question:** Do I have sufficient relevant experience to ACT as a QP for this task?

● Yes  
● No



This is just an example: **EVERYONE IS DIFFERENT!**

35

35



## Still Not Sure What the Role is?

- Again, the role of the Qualified Person is a core principle of NI 43-101
- Think about whether:
  - you have the appropriate expertise that your peers would agree with to take responsibility of the information
  - you have verified the disclosure, it's based on reliable information, reflects sound professional opinions and you have applied industry practices & using consistent terms
  - you're fulfilling the gatekeeper by providing information so that there is opportunity to compare projects and help inform the non-expert public's investment decisions (this helps provides confidence in the capital markets)

36

36



## But Really, Does it Matter?

### YES!

- When you act as the Qualified Person you are providing certification of your credentials, and consenting to the public that the information you provide is accurate and based on expertise and industry norms
- If you act as the Qualified Person outside of your expertise you may potentially be held accountable under the Securities Act (civil and secondary market liability) and possibly Criminally (forgeries, frauds etc.)
- Misrepresentations and errors may result in limitations to your professional license, sanctions, or even removal of your license (your ability to work)

37

37



## Examples of Discipline Cases

Individual(s)	Issuer(s)	Disciplinary Bodies	Date
John Archibald	First Mexican Gold Corp.	Commission - BCSC	2022
Stephen Poirtras	Quebec Deposit & Investment Fund (Insider)	Commission - AMF	2022
Martin, Rice, & Fidel	Imperial Metals Corp. (Mount Polley)	Association - EGBC	2022
Todd McCracken	Champion Bear Resources Ltd. & New Age Metals Inc.	Association - PGO	2021
Glen MacDonald	Zanzibar Gold Inc.	Association - EGBC	2020
Vivian Park	Prize Mining Corp. & Arian Resources Corp.	Association - EGBC	2019
John Archibald	First Mexican Gold Corp.	Association - PGO	2018
Dennis Patron	GOOD Mining Exploration Inc.	Association - PGO	2016
Michelle Stone	Canada Lithium Corp.	Court - Ontario Court	2016
Ian Foreman	Golden Sun Mining Corp.	Association - EGBC	2016
Peter George	Barkerville & Rubicon Minerals Corp.	Associations - EGBC and PGO	2016
Richard Munroe	Rio Plata Exploration Corp.	Association - EGBC	2014
Bernard Boily	Bear Lake Gold Ltd.	Commission - OSC	2013
Matthew Russell	Azteca Gold Corp.	Commission - ASC	2012
John Paterson	Southwestern Resources Corp.	Multiple - BCSC, BC Court	2009

38

# Disclosure: What Counts & Common Problems



39

## “Disclosure” Under NI 43-101

Disclosure means:

- any oral statement or written information
- made by, or on behalf of the company
- intended to be, or reasonably likely to be, made available to the public in a jurisdiction of Canada
- whether or not filed under securities legislation...including websites\*



\* Disclosure reviews by regulators look at many different public documents

40

40



## NI 43-101 Has Important Parts

- Part 2: Requirements Applicable to All Disclosure
  - What always applies
- Part 3: Requirements Applicable to Written Disclosure
  - What always applies to written disclosure including technical reports, news releases, slide decks etc.

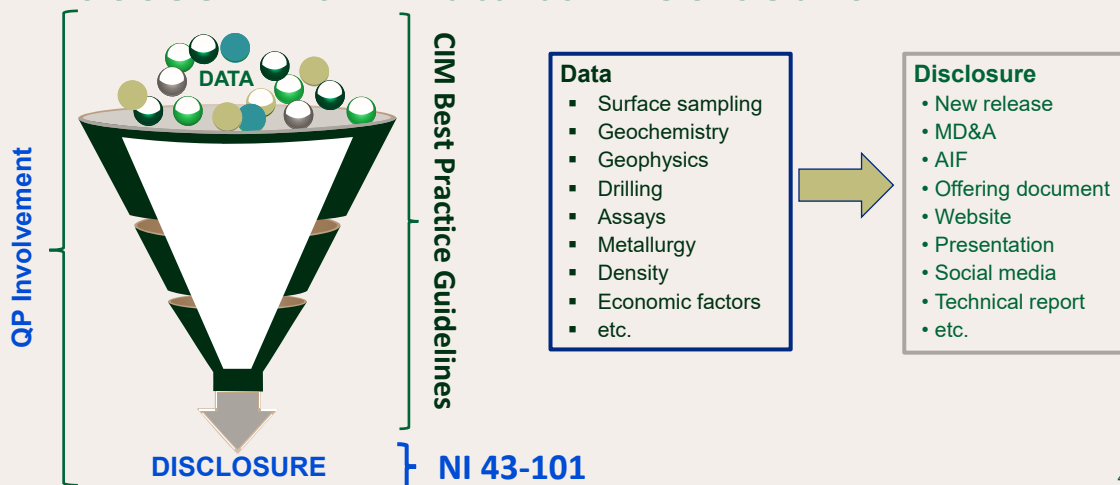
Tip: The titles of the 10 parts of the rule will really help you with what you need to know

41

41

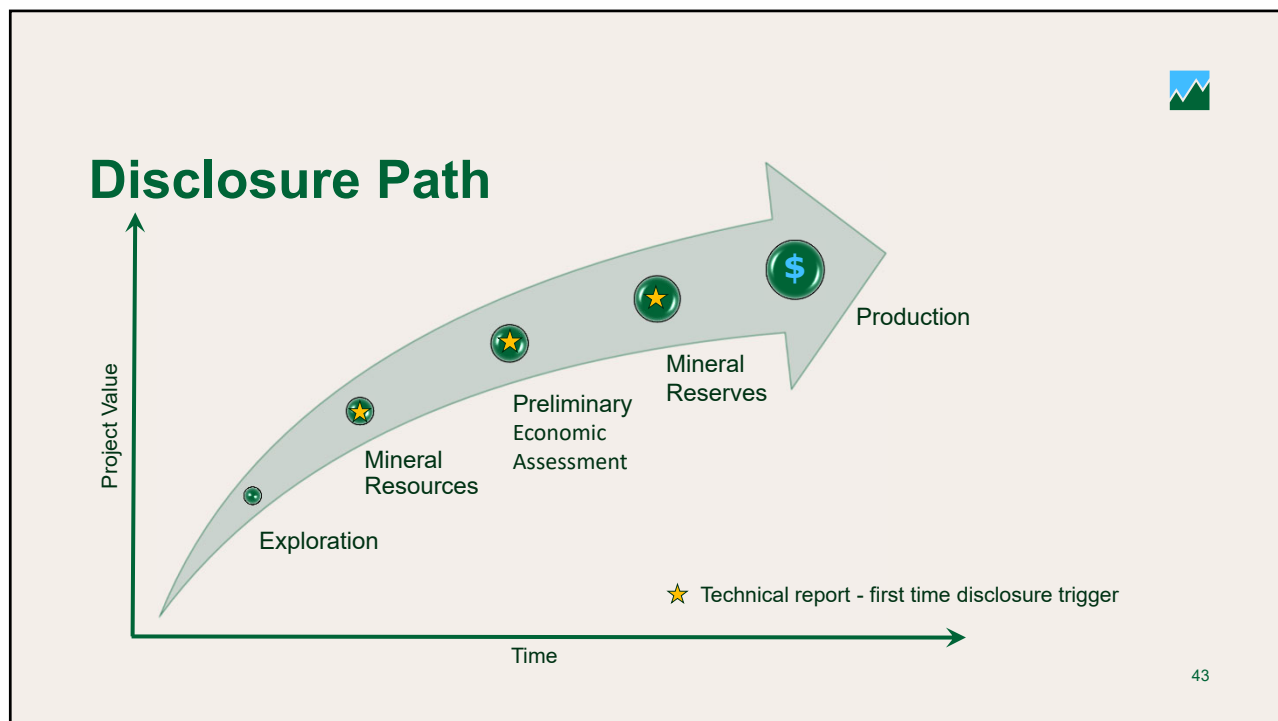


## Process: From Data to Disclosure



42

42



43

## Exploration Information Disclosure

Do	Do not
✓ Describe the type of sample	✗ Disclose visual estimates of grade
✓ Include drill hole location information	✗ Selectively reporting "up to" results
✓ Disclose higher grade zone within interval	✗ Omit stating true widths of drill intervals
✓ Disclose all the results - good and bad	✗ Stretch assay results beyond support
✓ Provide the name and location of the lab, analytical method, and comment on the QA/QC procedure	✗ Misrepresent a geophysical or geochemical anomaly as a deposit
✓ Disclose historical estimates and exploration targets correctly, including cautionary language	✗ Disclose gross metal values
	✗ Disclose economics on an historical estimate or exploration target

44

44



## Mineral Resources

Definition of a Mineral Resource [CIM Definition Standards - May 2014]

- Concentration or occurrence of solid material of economic interest in or on the Earth's crust
- Form, grade or quality, and quantity is such that it has Reasonable Prospects for Eventual Economic Extraction
- Location, quantity, grade or quality, continuity and other geological characteristics are known, estimated or interpreted from specific geological evidence and knowledge, including sampling

*Additional Guidance:*

- *Tonnes & grade figures are not precise calculations and should be referred to as "estimates"*
- *Round-off estimates to a reasonable number of significant figures*

45

45



## Mineral Resources

Disclosing Mineral Resources (s. 2.2 and s. 3.4)

When disclosing Mineral Resources include:

- CIM categories of mineral resources (inferred, indicated, & measured)
- Quantity and grade of each resource category
- Inferred resources reported separately from other categories
- Tonnes and grade for each category, if contained metal disclosed
- Effective date of the resource estimate
- Key assumptions, parameters, & methods used
- Any known risks that could materially affect potential extraction/development
- Statement that "*mineral resources that are not mineral reserves do not have demonstrated economic viability*" if economic analysis of resources is disclosed

46

46



## Mineral Resources Disclosure

### Do

- ✓ Provide the effective date
- ✓ Disclose both tonnes and grade
- ✓ Provide key assumptions, parameters, and methods
- ✓ Constrain the resource estimate
- ✓ State how equivalent grades were calculated
- ✓ Make use of section 3.5 of NI 43-101

### Do not

- ✗ Disclose only contained metal
- ✗ Disclose gross metal values
- ✗ Use 'non-compliant' resource modifiers, or reporting estimates without categories
- ✗ Misuse of the term "ore"
- ✗ Add inferred resources to other categories of resources
- ✗ Ignore CIM Definition Standards and CIM Best Practice Guidelines

47

47



## Preliminary Economic Assessment

### Definition of a "preliminary economic assessment" (s. 1.1)

- Means a study, other than a prefeasibility (PFS) or feasibility study (FS), that includes an economic analysis of the potential viability of mineral resources

### Appropriate uses of a PEA

- Road map for planning and strategic decision making
- Preparing for a prefeasibility study
- Public disclosure to raise capital and advance the mineral project

48

48





## Preliminary Economic Assessment

Disclosing a PEA - see s. 2.3(3)

May disclose the results of a PEA that includes inferred resources if the disclosure states with equal prominence:

- PEA is preliminary in nature
- Includes inferred resources that are too speculative geologically to have the economic considerations applied to them
- No certainty that the PEA will be realized

Also:

- State the basis and assumptions for the PEA
- Describes the impact of the PEA on any further study

49

49



## Limitations of a PEA

- Underestimates the costs and complexities of the project
- Sets expectations for NPV, IRR, etc. that may not be achieved in PFS/FS
- Often uses overly optimistic metal recoveries and metal price assumptions
- Over reliance on converting inferred resources to indicated resources
- Early permitting process may restrict changes to the mine design
- May be misleading if the PEA treats inferred resources as mineral reserves (e.g., usually inappropriate for a PEA after mineral reserves)
- High risk of project failure if the PEA is used as the basis for making a production decision

50

50



## Production Decision without Mineral Reserves

- Decision is the responsibility of the issuer and its management and board
- Does **not** trigger a technical report to support the production decision
- Decision is typically based on at least a prefeasibility study establishing mineral reserves which reduces the risk of economic and technical failure
- Without disclosing the added risks, the issuer may be misleading investors
- Disclose that the production decision is not based on a technical report supporting mineral reserves
- Such projects have a much higher risk of economic or technical failure
- Project failure may adversely impact the issuer's future profitability

51

51



## Example: Caution for Production Decision on a PEA

- Risks** { *"The Company advises that it has not based its production decision on a feasibility study of mineral reserves, demonstrating economic and technical viability, and, as a result, there may be an increased uncertainty of achieving any particular level of recovery of minerals or the cost of such recovery, including increased risks associated with developing a commercially mineable deposit."*
- Impact of Risks** { *Historically, such projects have a much higher risk of economic and technical failure. There is no guarantee that production will begin as anticipated or at all or that anticipated production costs will be achieved.*  
*Failure to commence production would have a material adverse impact on the Company's ability to generate revenue and cash flow to fund operations. Failure to achieve the anticipated production costs would have a material adverse impact on the Company's cash flow and future profitability."*
- PEA caution** { *The Company further cautions that the PEA is preliminary in nature. No mining study has been completed. Mineral resources are not mineral reserves and do not have demonstrated economic viability. There is no certainty that the PEA will be realized."*

52

52

## PEA Disclosure Tips

**Do**

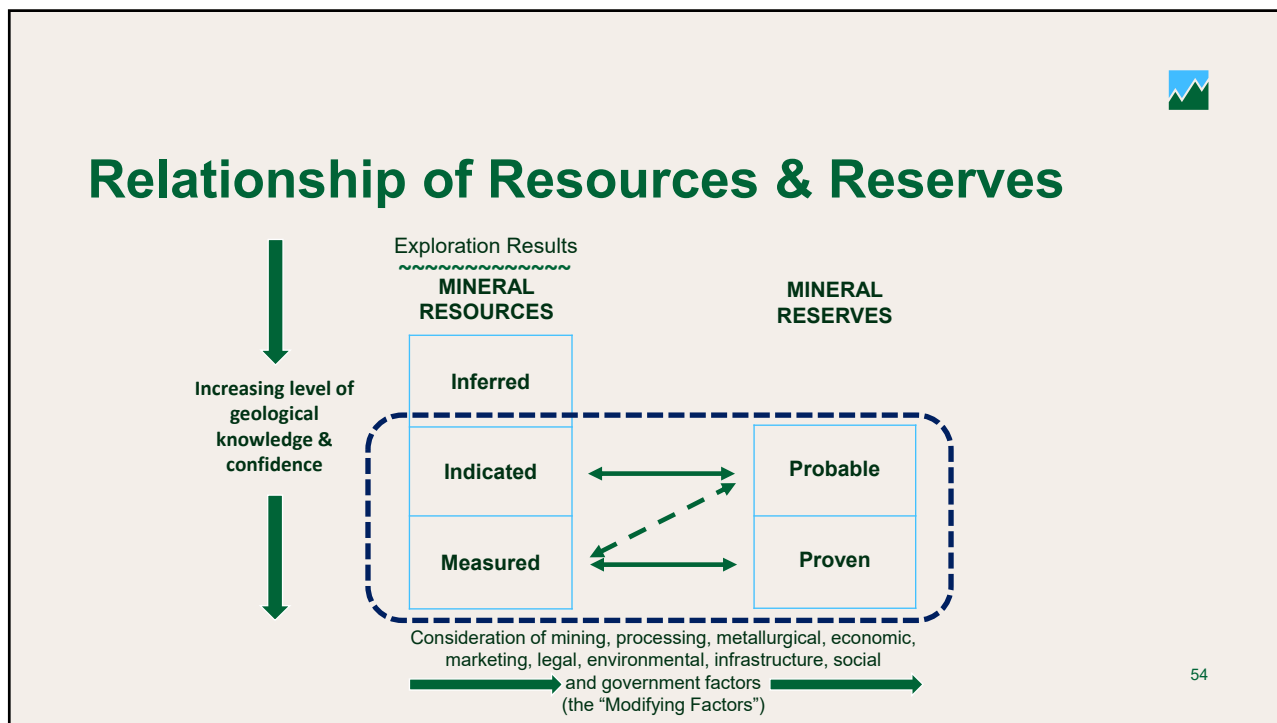
- ✓ Provide a clear statement of the main assumptions
- ✓ Prepare analysis on a 100% equity basis
- ✓ Include required cautionary language [2.3(3)(a) and 3.4(e)]
- ✓ Use a reasonable range for the sensitivity analyses
- ✓ Use the correct terms (PEA, PFS, FS) for the type of study

**Do not**

- ✗ Disclose an economic analysis on an exportation target or historical estimate
- ✗ Disclose only pre-tax values
- ✗ Use an unrealistic discount rate
- ✗ Combine the outcomes of a PEA with the outcomes based on mineral reserves
- ✗ Misuse of the PEA-level study
- ✗ Omit risks related to mining from mineral resources instead of reserves

53

53



54



## Mineral Reserves

### Definition of a mineral reserve (CIM Definition Standards - May 2014)

- Economically mineable part of a measured and/or indicated mineral resource after taking account of all relevant **Modifying Factors**
- Includes diluting materials and allowances for losses which may occur during mining
- Reserves are defined by studies at prefeasibility (PFS) or feasibility (FS) level that demonstrate at the time of reporting extraction could be justified

55

55



## Mineral Reserves

### Disclosing Mineral Reserves (s. 2.2 and s. 3.4)

When disclosing Mineral Reserves include:

- CIM categories of mineral reserves (proven and probable reserves)
- Quantity and grade of each reserve category
- Effective date of the reserve estimate
- Key assumptions, parameters, and methods used
- Any known risks that could materially affect potential development
- Statement whether reserves are included or excluded from resources
- Statement that "*mineral resources that are not mineral reserves do not have demonstrated economic viability*" if results of an economic analysis of resources is disclosed

56

56



## Production Results - Additional Disclosure

### Production Cost Reporting

- Must clearly set out what costs are and are not included in the calculation. This provides investors with the ability to compare results of different companies which use different calculations
- Gold producers should follow the World Gold Council Production Cost Standard to provide further transparency into the costs associated with producing gold
- All-In Sustaining Costs (AISC) and All-In Costs – used by most major Canadian gold producers, these must be fully explained (non-GAAP measure)

57

57



## Overly Promotional Disclosure

**WORLD CLASS DISCOVERY!**

**BONANZA GRADES!**      **World Class Deposit!**

***Abundant Visible Gold!***

**Exceptionally High-Grade Results!**

- We send regular comment letters on these terms
- Do not rely on “other news releases did it”
- CEO/President quotes common offender here

58

58



## Exploration Results

- Analytical method (ICP, AA, fire assay, Chrysol, etc.)
- Name & location of Laboratory
- Lab certification/accreditation, or lack thereof
- Comments on QA/QC
- Note any non-standard sampling, preparation or procedures
- Provide relevant statistical details (range & distribution)
- Selective disclosure prohibited (NO “values up to...”)
- Gross metal value NOT acceptable

59

59



## Analytical Results

- Sources of information
- Geophysical and geochemical anomalies  
(an anomaly does not mean you have found a mineral deposit)
- Sampling (provide details: type, number, location, etc.)
- Drilling (report results for all holes, not just the best, plus true widths, hole locations, etc.)
- Report good & bad results (balanced)
- Clearly distinguish between new & previously disclosed results

60

60



## Visual Observations

### Restricted:

- Visual estimates of grade (e.g. 1% copper)
- Visual estimates of mineralization (e.g. 5% chalcopyrite)

### Not Restricted:

- Factual observations (e.g. visible gold)
- Photos

### Not Recommended

- “waiting for assay results”

**Strongly recommend pre-filing news releases with CIRO**

61

61



## Phrases not to use

“The following is not compliant with NI 43-101...”

*ALL disclosure MUST be compliant with NI 43-101, if it doesn't it is not suitable for disclosure*

“NI 43-101 compliant... [drilling, sampling, etc.]”

*NI 43-101 only regulates disclosure NOT how to conduct the work*

“This information should not be relied upon”

*If information cannot be relied upon, it is not suitable for disclosure*

62

62

## Core Principle: Technical Report – the “How To”



63



## What is a Technical Report?

A **summary** that provides a concise and accurate description of a mineral project, whether in the exploration, development, or production stage. Its purpose is to provide relevant and accurate information that potential investors can use to inform investing decisions.

### Reasons a technical report is filed?


- Triggered by securities law
- Listing on a stock exchange
- First time disclosure of a mineral resource, reserve, PEA
- Milestones

***Must follow Form 43-101F1***

64

64






## NI 43-101 Technical Report Basics

**The Technical Report is:**



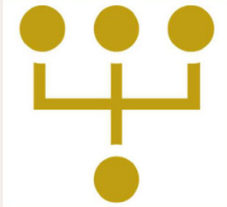
A **summary** of scientific & technical information about the activities on a mineral project

**The Technical Report is intended for:**



The audience is **the public** and **their advisors** who, in most cases, will not be mining experts


**And how *technical* should a Technical Report be?**



Should be **simplified and understandable** for the public

65

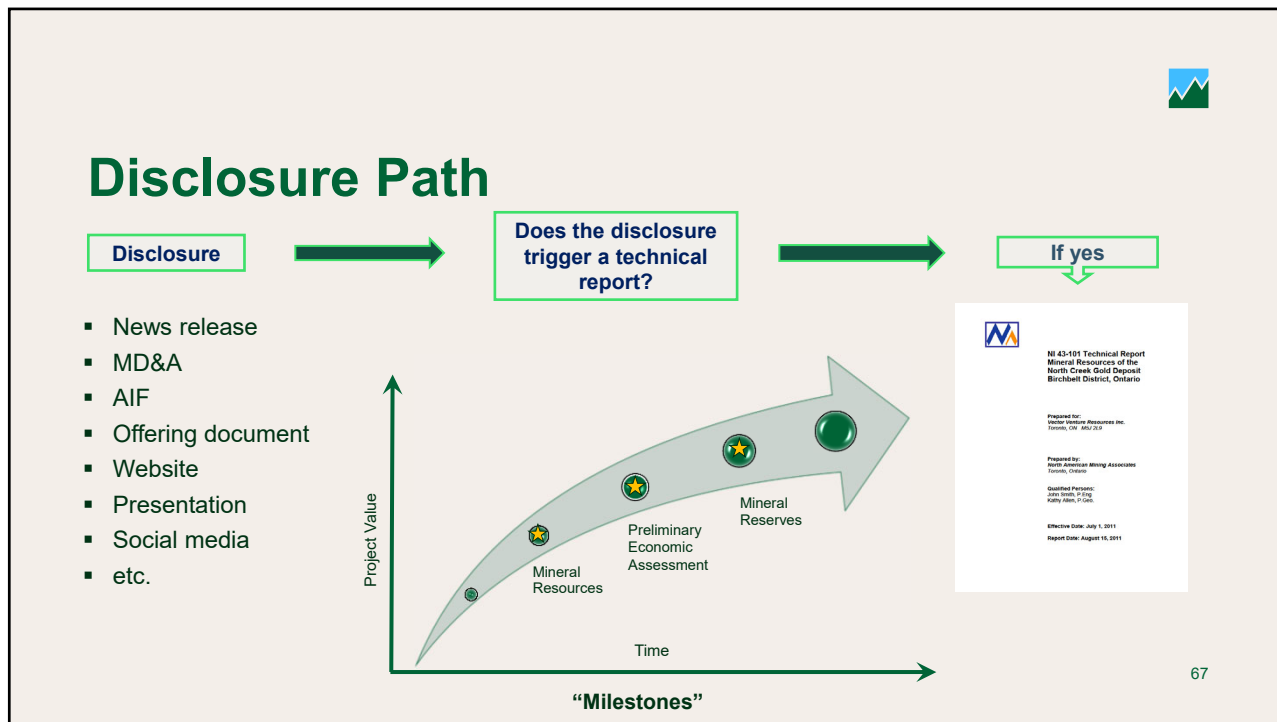
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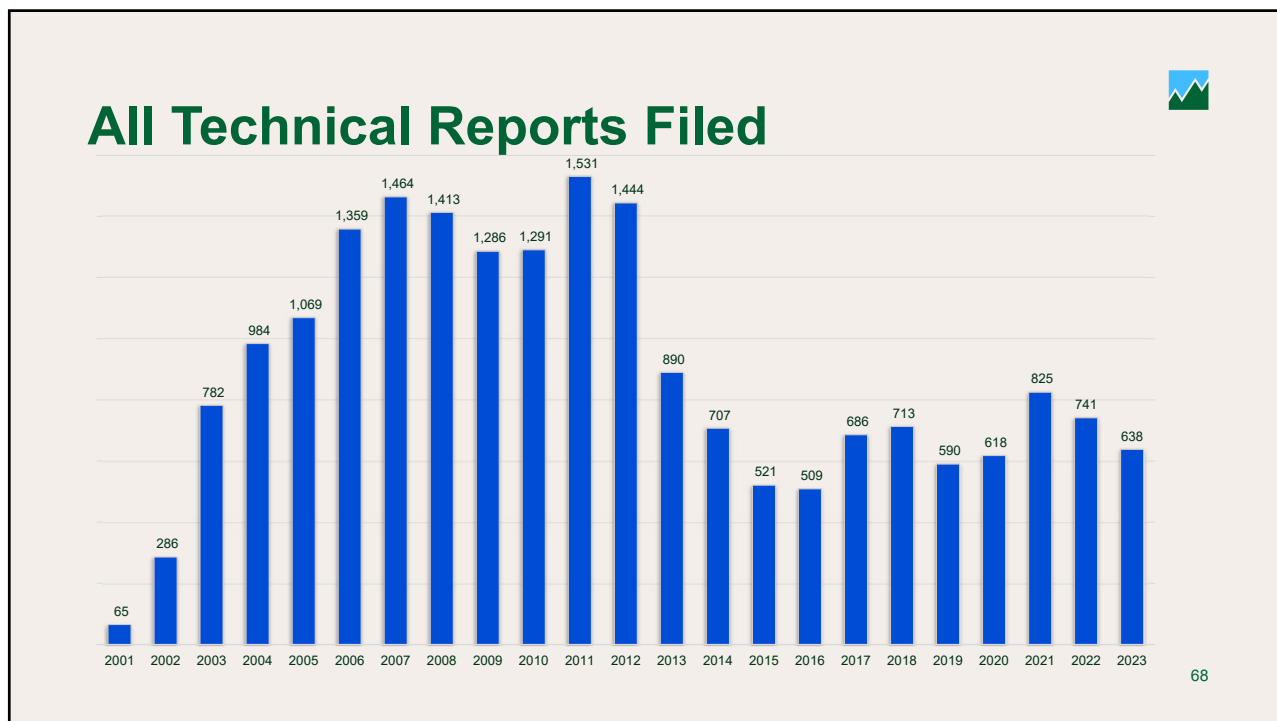
## “Milestones” Trigger Technical Reports

Property Milestones	Company Milestones
<ul style="list-style-type: none"> <li>▪ <b>First time disclosure of:</b> <ul style="list-style-type: none"> <li>▪ Mineral resource</li> <li>▪ Preliminary economic assessment</li> <li>▪ Mineral reserve</li> </ul> </li> <li>▪ <b>Material change to any of the above</b></li> </ul>	<p><b>First time reporting in Canada</b></p> <p>Filing of any of the following where the material technical information is not already supported by a current technical report:</p> <ul style="list-style-type: none"> <li>▪ Preliminary (long form) prospectus</li> <li>▪ Preliminary short form prospectus</li> <li>▪ 1<sup>st</sup> time or material change to MR/PEA/MR Information or proxy circular</li> <li>▪ Offering memorandum</li> <li>▪ Rights offering circular</li> <li>▪ Annual information form</li> <li>▪ Valuation</li> <li>▪ TSX Venture offering document</li> <li>▪ Take-over bid circular</li> </ul>

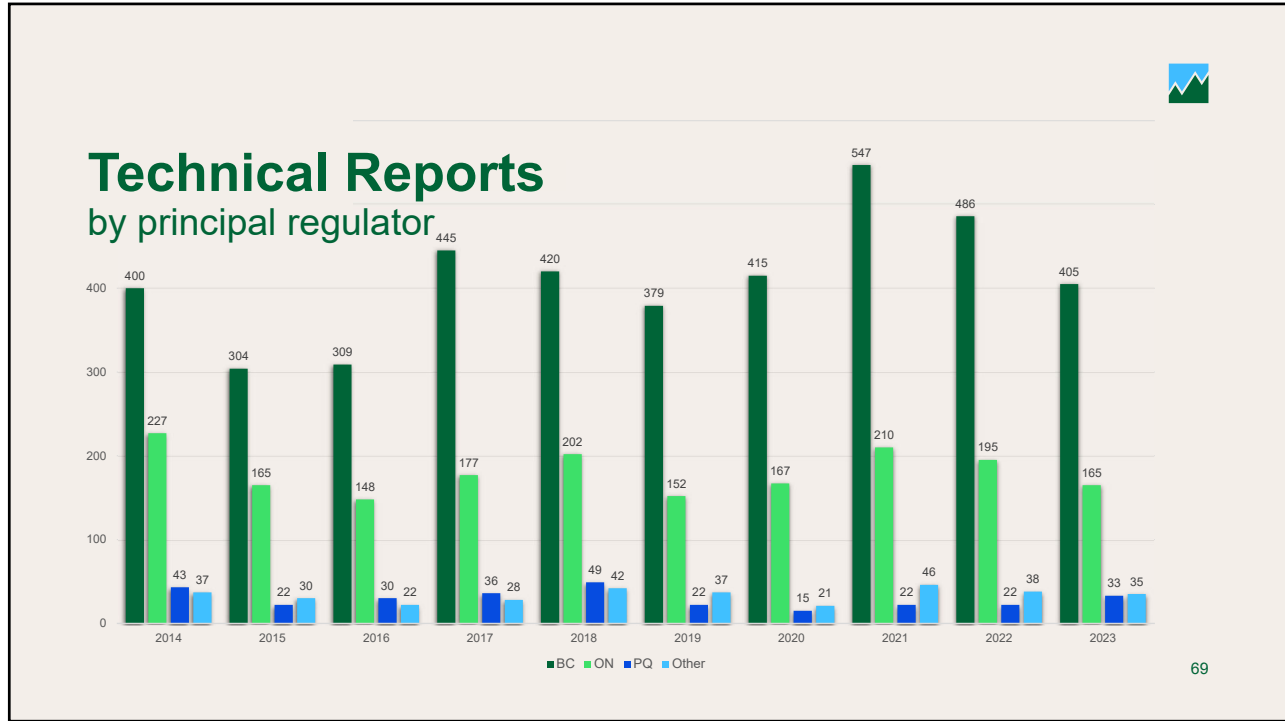
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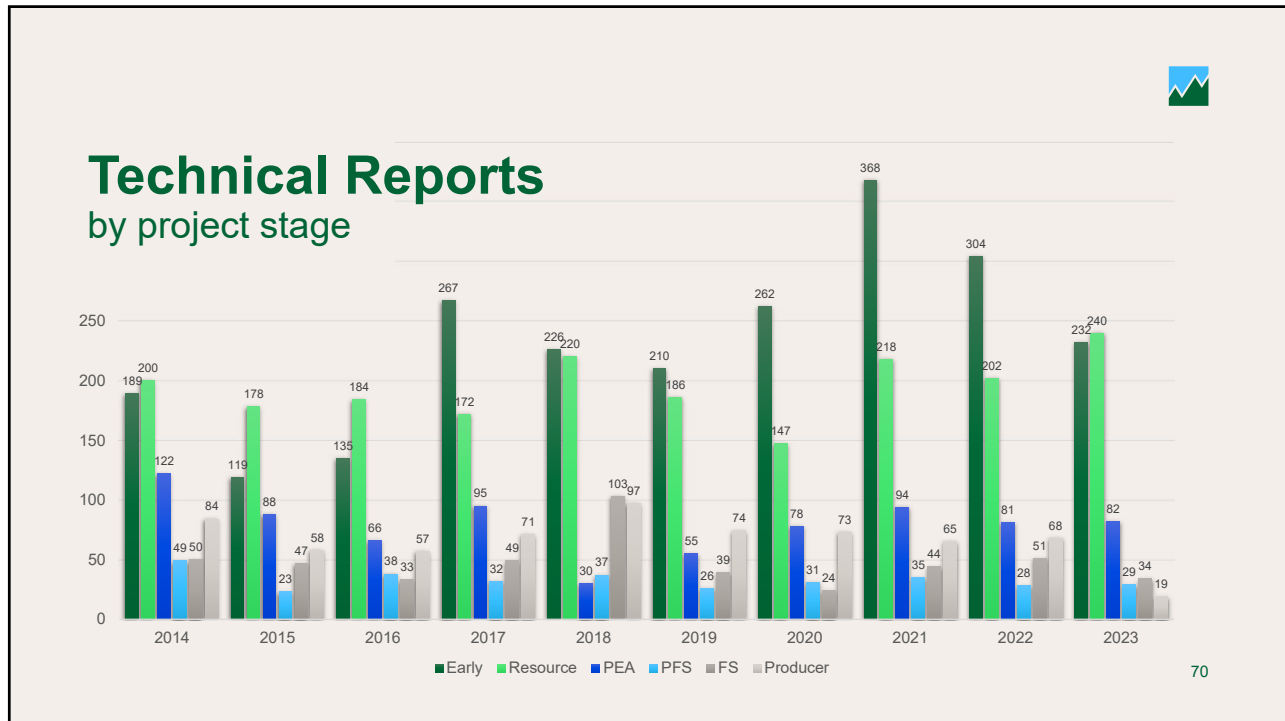
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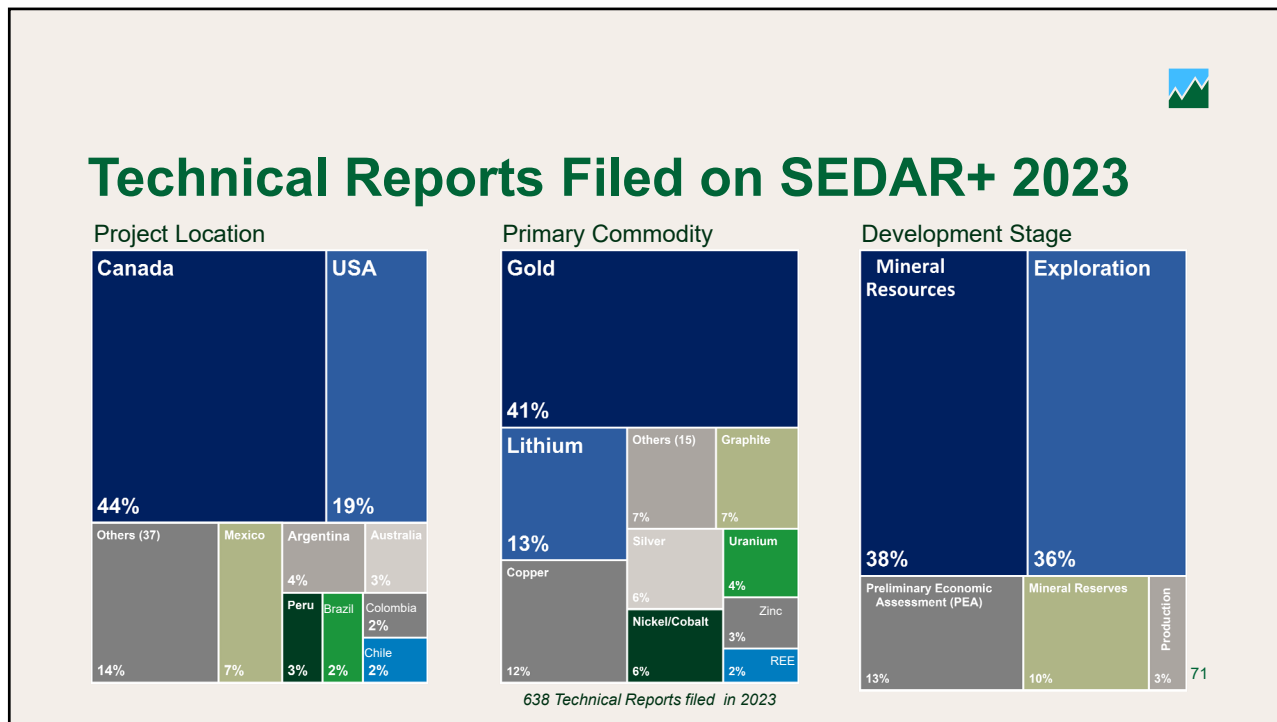
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69



70



71

### 5 "W"s and 1 "H" of Technical Reports

<b>Who</b>	<ul style="list-style-type: none"> <li>Prepared by one or more QPs</li> <li>QPs may need to be independent from the Company and the property</li> </ul>
<b>What</b>	<ul style="list-style-type: none"> <li>Current <a href="#">summary</a> of all the material scientific and technical information about a mineral property material to the Company</li> </ul>
<b>Where</b>	<ul style="list-style-type: none"> <li>Filed publicly on SEDAR+</li> </ul>
<b>When</b>	<ul style="list-style-type: none"> <li>Triggered by disclosure of milestone events</li> <li>Must be filed within a specific timeframe (often within 45 days)</li> </ul>
<b>Why</b>	<ul style="list-style-type: none"> <li>Supports a Company's scientific and technical disclosure</li> <li>Assists investors and their advisor's investment decisions</li> </ul>
<b>How</b>	<ul style="list-style-type: none"> <li>Must be prepared following a prescribed table of contents and form (Form 43-101F1) and the requirements of NI 43-101</li> </ul>

72



## Misconceptions About Technical Reports

- Technical reports are “approved” by the regulator before being publicly filed on SEDAR+
- The company has a “43-101” report, so it ‘*must be a good*’ project
- The technical report is over 500 pages long, so it must be an advanced property and close to being in production
- How could the project fail? – it had a “43-101” technical report!

### Remember:

- NI 43-101 is a **disclosure standard** not a **technical standard** nor a **measure of merit**
- *The QP is responsible for the methods, assumptions, and judgements used for verifying, interpreting, and reporting of the technical information*

73

73



## “All Material Information”

### What does this mean?

- Even though a particular event (a resource estimate, for instance) triggers the report, it’s not the only piece of information the report must support
- It means the report must be a full description of what’s really going on at the property
- There is no mechanism for a previous technical report to be “incorporated by reference” or relied on, must summarize all relevant information
- The Instrument says:
  - s. 1.1 – the definition of “technical report” says it “includes, in summary form, all material information” about the property
  - s. 8.1(2)(i) – the QP’s certificate must state that the report “contains all material information” needed to ensure it’s not misleading

74

74



## Mineral Properties with Multiple Deposits

- Can an issuer file separate technical reports for different deposits on the same mineral property?
- **No** – unless there is clearly a reason for the two (or multiple) deposits to be developed separately (for example, infrastructure, permitting, or patchwork ownership)
- Companion Policy says:
  - Part 1.1(6) - a property includes claims that are contiguous or in a proximity that any underlying deposits would likely be developed using common infrastructure
  - Part 4.2(8) - a technical report when filed must be complete and current and there should only be one current technical report on a property at any point in time

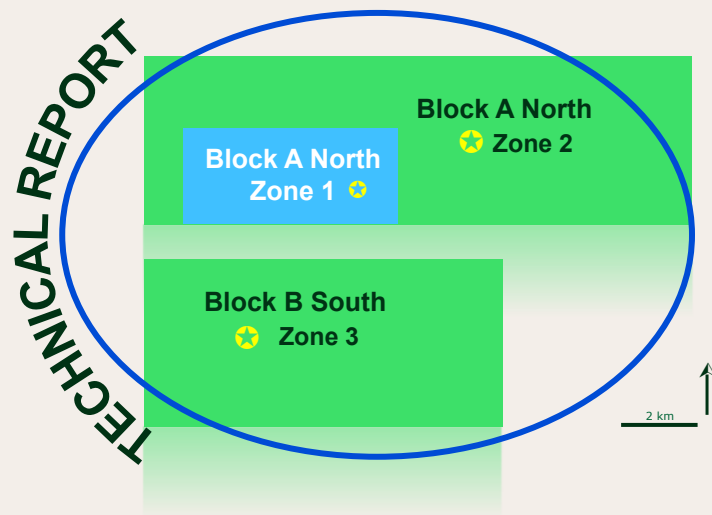
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75



## Example:

Area in blue circle should be disclosed as One (1) Technical Report



76

76

## Independent Technical Reports

### Section 5.3

- **ALL QPs signing the technical report must be independent for the following triggers**
  - First-time reporting issuer in Canada
  - Filing a preliminary long form prospectus
  - First time disclosure of a mineral resource, PEA, or mineral reserve
  - >100% change to an existing mineral resource or mineral reserve
- **“Producing Issuer” are exempt from providing independent report**
  - Gross revenue >\$30 million in recent fiscal year; and
  - Gross revenue >\$90 million in last three fiscal years



*Ask yourself: Would someone you met on the street believe you were independent?*



77

77

## Misconceptions about Independence

- QPs must be independent for ***all disclosure***
  - The **independence requirement** only applies to technical reports, not to routine disclosure
- ***All technical reports need independent authors***
  - Section 5.3 gives the times the authors must be independent
- ***You cannot have a mixture of independent & non-independent authors***
  - If a report **does not require independence**, any mix is okay
  - If a report **does require independence** by s. 5.3, then **all authors** must be independent



78

78



## Technical Reports – Practical Tips for QPs

### Do

- ✓ Make sure you have relevant experience
- ✓ Remember the purpose of the report
- ✓ Provide a summary of the material technical information about the property
- ✓ Use the 2014 CIM Definition Standards
- ✓ Follow appropriate industry Practice Guidelines
- ✓ Describe the risks and uncertainties
- ✓ Have the report peer reviewed

### Do not

- ✗ Assume all technical reports are reviewed by regulators when filed
- ✗ Forget the audience reading the report
- ✗ Use the technical report as a data dump
- ✗ Forget that there is only one current technical report at a point in time
- ✗ Neglect a proper summary section
- ✗ Ignore QP independence requirements
- ✗ Disclaim responsibility for technical data

79

79



## When all else fails, read the Instructions



The Form's 9 instructions – '*cheat sheet*' style:

1. Provide a **summary** of the information about the mineral project
2. Follow NI 43-101 and the Form's requirements
3. Technical report should use plain language
4. Items 1 to 14 and 23 to 27 are for all projects; Items 15 to 22 for "advanced properties"
5. There is only one current technical report on a property at a time
6. QP determines the level of detail necessary
7. Do not use disclaimers
8. Appendices should not be included
9. Remember the QP certificates & consents

80

80





## Technical Report - Common Mistakes

- The Report is not addressed to the issuer
- The issuer's rights to the property are not disclosed
- Work has been done on the property since the last QP visit
- Items (sections) are missing
- Includes disclaimers
- Illegible figures
- Missing cautionary language *each* time an adjacent property is mentioned
- Restricted Disclosure (section 2.3 of NI 43-101)
- Disclosing resources without cautionary statements when necessary
- The resource/reserve disclosed was not prepared for the issuer

81

81



## Form 43-101F1 Items

- |  |   |
|--|---|
| Item 1: Summary  | Item 15: Mineral Reserve Estimates  |
| Item 2: Introduction   | Item 16: Mining Methods   |
| Item 3: Reliance on Other Experts  | Item 17: Recovery Methods   |
| Item 4: Property Description and Location  | Item 18: Project Infrastructure   |
| Item 5: Accessibility, Climate, Local Resources, Infrastructure and Physiography | Item 19: Market Studies and Contracts                                     |
| Item 6: History  | Item 20: Environmental Studies, Permitting and Social or Community Impact |
| Item 7: Geological Setting and Mineralization                                    | Item 21: Capital and Operating Costs                                      |
| Item 8: Deposit Types  | Item 22: Economic Analysis  |
| Item 9: Exploration  | Item 23: Adjacent Properties  |
| Item 10: Drilling  | Item 24: Other Relevant Data and Information                              |
| Item 11: Sample Prep., Analyses and Security                                     | Item 25: Interpretation and Conclusions                                   |
| Item 12: Data Verification   | Item 26: Recommendations  |
| Item 13: Mineral Processing and Metallurgical Testing                            | Item 27: References   |
| Item 14: Mineral Resource Estimates  |   |

**Note:** Items 15-22 are required for a technical report on an [advanced property](#)

82

82

## The Title Page

**NI43-101 Technical Report**

On the

**Panda Pass Property**  
**Omineca Mining Division British Columbia**

NTS: 094D039  
Latitude 56°23'N, Longitude 126°18'W (centre)

For  
BCGeo Resources Inc

by

**J. Smith, P. Geo, Coauthor**  
Minarrow Exploration Consultants Ltd


**G. Goodall, P. Geo, Coauthor**  
Global Geo Inc.


**June 30, 2024**

83


83

## Item 3 – Reliance on other experts

 **Cannot** disclaim responsibility for part of report that QP prepared or supervised  
**Cannot** disclaim responsibility for data and opinions within area of expertise (expected to verify relied on geological data)

 **Can** rely on **legal** (e.g. title opinion), **environmental**, **political** or **tax** information  
The QP must state the following about the reliance, opinion or statement of the other expert:

- Source – including date, title and author
- Extent of reliance
- Portions of technical report the disclaimer applies to

 **Cannot** impose restrictions on SEDAR+ filing

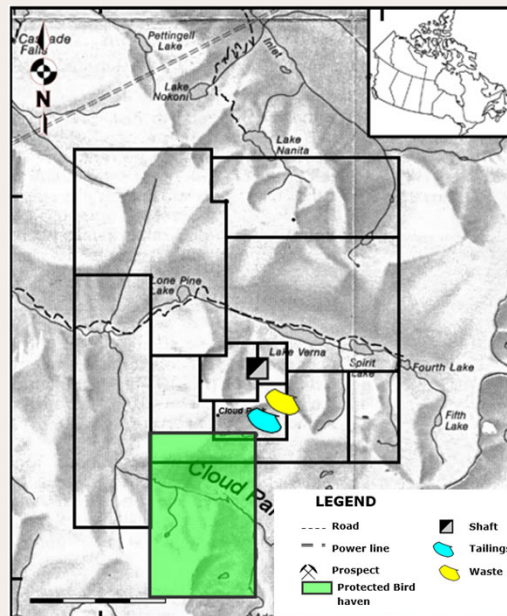
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84

## Item 4 – Property Description & Location

Things that are often neglected:

- Rights to the property, ongoing obligations, royalties etc.
- Legal access, surface rights, expiry dates
- Environmental liabilities and permitting
- Significant issues that may affect title, access or ability to do work e.g. Indigenous Rights



85

85

## Item 6 – History

- History of the property should be summarized here
- Be clear about what information is on the issuer's property – and what is not
- Historical Estimates go in this section, not under Item 14

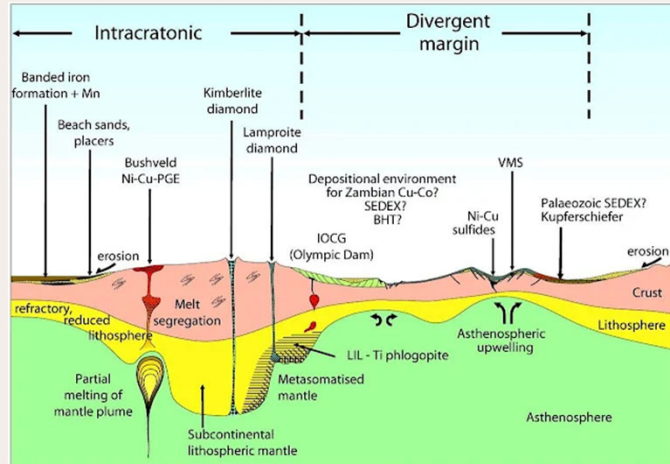


86

86

## Item 8 – Deposit Types

- Describe the mineral deposit type(s) being investigated/explored for
- This report is intended for the public & their advisors, who in most cases are not geological experts
- Provide a written description of deposit type



87

## Item 9 – Exploration

- Disclose exploration work here
- Distinguish between work done by issuer and by others
- Procedures & parameters relating to each survey/investigation
  - number of samples collected in rock/soil surveys
  - number of line-kilometres in geophysical surveys
- Significant results & interpretations



88

88

## Item 10 - Drilling

- **Type** of drilling e.g. Diamond, Reverse Circulation
- Location, azimuth & dip of drill holes
- Relationship between sample length & true thickness
- Significantly higher-grade results within a lower grade intersection
- Must also follow s. 3.3 of NI 43-101



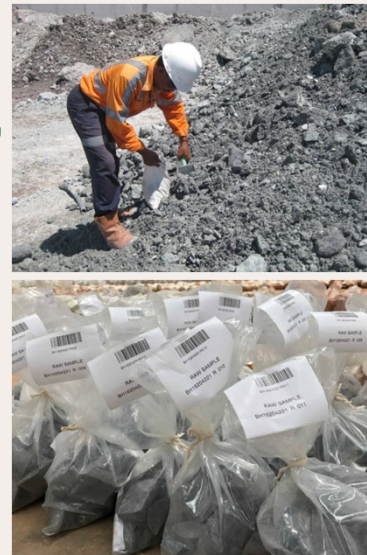
89

## Item 11 – Sample Preparation, Analyses & Security

- **Field sampling procedures**
  - Sampling process – for *each* type of sample program
  - Security measures to ensure the validity and integrity of samples
- **Lab analyses**
  - Post sampling handling and analysis
  - Identify lab and certification of lab
  - Is the lab independent of the issuer
  - Discussion of the QA/QC measures applied (company & lab)



**The author's opinion on the adequacy of sample preparation, security and analytical procedures**



90

90



## Item 12 – Data Verification

- This section provides an analysis of the QPs procedure to verify the data
- **“The data verification procedures applied by the QP”**
  - As the QP is relying on various geological data, that data must be verified by the QP
  - Any limitations or failure to conduct such verification and the reasons why (maybe you can't access the site/samples?)
  - QP's opinion on the adequacy of the data for the purposes used in the report – can you rely on it? If not, say so (and what can be done going forward)



*Ask yourself, will just reviewing assay certificates be enough data verification – or should you take some field samples as part of your site inspection?!*

91

91



## Item 23 – Adjacent Properties

- Definition is a property that:
  - the issuer does not have an interest;
  - has a boundary reasonably proximate to the property being reported on;
  - has geological characteristics like those of the property being reported on
- Source of information
- Cautionary language is often forgotten:
 

*“The QP has been unable to verify the information and that the information is not necessarily indicative to the mineralization on the property that is the subject of the technical report”*

N.B. Include this everywhere in the technical report where information is provided that is not on the property

92

92



## Item 25 - Interpretations & Conclusions

- Summarize the results & interpretations of all data and relevant information
- Provide conclusions of the QP
- Discuss any significant risks or uncertainties and foreseeable impacts that could affect the results and the project's ongoing potential viability

93

93



## Item 26 - Recommendations

- The recommendations must not be for more than two phases of work
- Provide detail of the recommended work programs & a breakdown of costs for each phase
- The recommendations must state whether advancing to a subsequent phase is contingent on results from previous phase

ACTIVITY	COST
Project management	\$123,000.00
Project Technical Staff	\$ 251,000.00
Vehicles	\$ 69,000.00
Camp	\$ 53,000.00
Environmental	\$ 15,000.00
Community Relations	\$ 50,000.00
Boardwalk 16 Drilling 100 holes / 1200 meters	\$ 503,000.00
Boardwalk 9A Drilling 20 holes / 200 metres	\$ 231,000.00
Sindy Drilling 20 holes / 200 meters	\$ 171,000.00
Reporting	\$27,000.00
<b>TOTAL</b>	<b>\$ 1,493,000.00</b>

94

94



## Certificate of Qualified Person

The requirements of the Certificate are given in NI 43-101, Section 8.1(2)

All parts must be included in the Certificate for each QP

### Common mistakes in Certificate:

- **Date of the report** in the Certificate does not match the date on the title page (too many revisions!)
- QP has not provided a **summary of relevant experience**
  - If responsible for a resource, must give summary of resource experience
  - If responsible for a report on a gold property, summary of relevant experience on similar gold projects
- **Responsibility**
  - **Every item** in the report must have a QP taking responsibility for it
- **Prior involvement**
  - **Don't panic!** Just verifying independence (& expertise) of QP
- **Independence of QP**
  - See 43-101CP, Part 1.5 for guidance



95

## Current Personal Inspection

- If a Company has done work since the last technical report, the QP will most likely have to complete a new current site inspection
  - Can delay review of transactions
  - Usually applies when a Company is trying to sell a property – disclosure is up to date for vendor (tech report, news releases) – but not for the issuer
- Can be less recent, if no material changes/work
  - Explain steps taken to ensure current and complete reporting



**Limited Deferral of Visit:** only early-stage exploration properties only – no resources/reserves; no drilling or trenching recommended

- The site is inaccessible due to seasonal weather conditions
- Site inspection must be completed as soon as possible
- QP discloses approximately when the inspection will be completed

96

96



## Consent of Qualified Person

- Example in Appendix B of 43-101CP
- QP must:
  - Consent to the public filing of the report
  - Name the disclosure document (e.g. Prospectus, Information Circular) that summaries or extracts of the technical report maybe disclosed in
  - Certify that they have read the disclosure document and the information in that disclosure document (e.g. Prospectus, Information Circular) represents the information in the sections of the technical report
- Consents are only filed with the original technical report – updated certificates and consents of technical report authors not required
  - Company's own QP can approve later disclosure

**Appendix B**  
**Example of Consent of Qualified Person**

[QP's Letterhead] or  
[Insert name of QP]  
[Insert name of QP's company]  
[Insert address of QP or QP's company]

CONSENT of QUALIFIED PERSON

I, [name of QP], consent to the public filing of the technical report titled [insert title of report] and dated [insert date of report] (the "Technical Report") by [insert name of issuer filing the report].

I also consent to any extracts from or a summary of the Technical Report in the [insert date and type of disclosure document (i.e. news release, prospectus, AIF, etc.)] of [insert name of issuer making disclosure].

I certify that I have read [date and type of document (i.e. news release, prospectus, AIF, etc.) that the report supports] being filed by [insert name of issuer] and that it fairly and accurately represents the information in the sections of the technical report for which I am responsible.

Dated this [insert date].

\_\_\_\_\_[Seal or Stamp]  
Signature of Qualified Person

\_\_\_\_\_  
Print name of Qualified Person

[Amended February 25, 2016]

97

## Additional Requirements for Advanced Property Technical Reports

- Technical reports on "Advanced Properties" must include: (Form 43-101F1 Items 15 to 22)
  - Item 15: Mineral Reserve Estimates
  - Item 16: Mining Methods
  - Item 17: Recovery Methods
  - Item 18: Project Infrastructure
  - Item 19: Market Studies and Contracts
  - Item 20: Environmental Studies, Permitting and Social or Community Impact
  - Item 21: Capital and Operating Costs
  - Item 22: Economic Analysis
- These items are where Preliminary Economic Assessment, Pre-feasibility, Feasibility Study and Operating Mine disclosure is provided

98

98

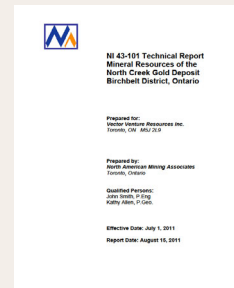
# Deep Dive into Technical Report: Tips & Tricks



## Process: Disclosure to Technical Report



- News release
- MD&A
- AIF
- Offering document
- Website
- Presentation
- Social media
- etc.





## High-Level Fatal Flaw Checklist

### QP certificates

- QPs relevant experience
- Independence, when required
- Current Personal Inspection - who, when & what

### Summary section

- Clear, concise, & complete

### Reliance on other experts

- Only legal, political, environmental, or tax

### Exploration Targets & Historical Estimates

- Basis, source, and cautionary statements
- Not treated as a mineral resource

### Data verification

- Steps taken by QP to verify the data

### Mineral Resources & Reserves

- Reasonable assumptions & cut-off grades
- Metallurgical recovery considered
- 2014 CIM Definition Standards
- Constraints applied

### Mining Study Level & Economic Analysis

- PEA, PFS, and FS are used properly
- Taxes, discount rate, sensitivities

### Environmental, Permits, & Social Impacts

- Permitting processes identified
- Social license issues highlighted

### Risks

- Potential property-specific impacts are clearly identified

*Note: These are only some potential pitfalls*

101

101



## Some of the most common issues in Technical Reports & News Releases

- Historical Estimates
- Metal Equivalents
- Grade x Width
- Data Verification
- Current Personal Inspections

102

102



## What is a Historical Estimate?

### Definition:

“An estimate of the quantity, grade, or metal or mineral content of a deposit that an issuer has not verified as a current mineral resource or mineral reserve, and which **was prepared before the issuer acquiring**, or entering into an agreement to acquire, an interest in the property that contains the deposit”



Just how old is this **historical estimate??**

103



## Historical Estimates – How To Disclose

An issuer may disclose an historical estimate, using the original terminology, if the disclosure includes:

- The ORIGINAL Source & Date of the estimate – s. 2.4(a)
- States the Relevance & Reliability – s. 2.4(b)
- Provide Key Assumptions and methods used etc. (if known) – s. 2.4(c)
- Give Categories: as in s. 1.2/1.3 of NI 43-101 or not – s. 2.4(d)
- Include more recent estimates – s. 2.4(e)
- Comments on what work needs to be done to upgrade – s. 2.4(f)
- Required cautionary statements – s. 2.4(g)(i)&(ii)

104

104





## Metal Equivalents

- Some issuers have disclosed equivalent grades calculated entirely by price-weighting. Price-weighting, without taking the differential recovery of each component element into account, is considered potentially misleading
- Algebraically, a price-weighted equivalent grade is simply a gross dollar value divided by a metal price. It is denominated in metal units rather than in dollars but is otherwise indistinguishable from a gross metal value
- Gross values are restricted by s. 2.3(1)(c) of NI 43-101**

***Without considering recoveries, an equivalent grade overstates the amount of metal that may eventually be obtained***

107

107



## Metal Equivalents – Example

Drill hole	From (m)	To (m)	Length (m)	Ag (g/t)	Au (g/t)	Pb %	Sb %	Zn %	AgEq (g/t)
XX-2022-01	29.0	33.0	4.0	<b>131.50</b>	0.84	2.12	1.85	4.59	<b>824.2</b>
<i>including</i>	30.0	32.0	2.0	<b>261.00</b>	1.62	4.20	3.70	9.10	<b>1,634.3</b>
XX-2022-02	43.0	48.0	5.0	<b>26.10</b>	0.13	0.09	0.18	0.14	<b>78.7</b>
<i>including</i>	46.0	48.0	2.0	<b>62.50</b>	0.21	0.19	0.42	0.29	<b>172.6</b>
<b>PRICE USED (USD)</b>				<b>\$18.00/oz</b>	<b>\$1,950/oz</b>	<b>\$1.00/lb</b>	<b>\$4.50/lb</b>	<b>\$1.50/lb</b>	

The calculation assumes 100% metallurgical recovery

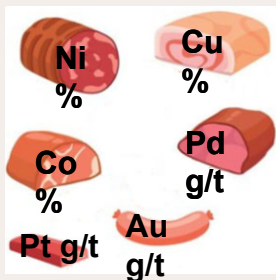
In the AgEq given, with the note below it, the company has:

- Not included metallurgical recovery
- Not all metals would be present in the same concentrate – Zn for example
- Stated “Indicative of gross in situ metal value” restricted by s. 2.3(1)(c) of NI 43-101

108

## Metal Equivalents – Example

Drill hole	From (m)	To (m)	Width (m)	Ni %	Cu%	Co%	(Pd+Pt+Au) g/t	Pd g/t	Pt g/t	Au g/t	NiEq %
XX_22_02	184	187.7	3.7	2.33	1.85	0.06	0.45	0.21	0.21	0.03	3.54
XX_22_02	185.3	187.7	2.4	3.49	2.73	0.09	0.64	0.3	0.3	0.04	5.27
XX_22_02	185.3	187.0	1.8	4.79	3.67	0.12	0.87	0.41	0.41	0.05	7.2
XX_22_02	185.3	185.9	0.6	8.21	1.6	0.24	1.62	0.8	0.79	0.03	10.11
PRICE				\$8.5/lb	\$4.25/lb	\$25/lb		\$1,700/oz	\$1,100/oz	\$1,800/oz	



100% recovery rates do not account for losses during processing, or treatment charges +/- penalties etc.

109

## Metal Equivalents – continued

Additionally, one could sum all assays including those that may not be recoverable and report a meaningless equivalent value:

2.7 g/t AuEq @ 0.5 m using:

0.1 %	Cu	25 ppm	Mo
0.9 g/t	Au	60 ppm	Co
17 g/t	Ag	1,000 ppm	REE
0.10 %	Pb	12 %	Fe
0.2 %	Zn	80 ppm	U
500 ppm	Li	7 ppm	Re

Or Equivalent Grade used to turn one type of deposit into another: e.g. Disclosing a AuEq grade for a Cu-Mo porphyry system with very small gold content



110

110



## Metal Equivalents – How to disclose

Misleading grade equivalents can be avoided: use s. 2.3(1)(d) of NI 43-101 & show them using:

- ❖ results of metallurgical test work
- ❖ if test work not available, include reasonable assumptions for recoveries from analogue deposits
- CIM’s guidance on equivalents: use of a grade equivalent or a value parameter should be for the *sole purpose of preparing the outlines of potentially economic mineralization* Subsequent grade estimations should be carried out for each element separately
- Foreign codes & guidance inc. JORC, SAMREC, & SME offer similar requirements for disclosure of equivalents. All of these are guidance for disclosure of equivalent grades

111

111

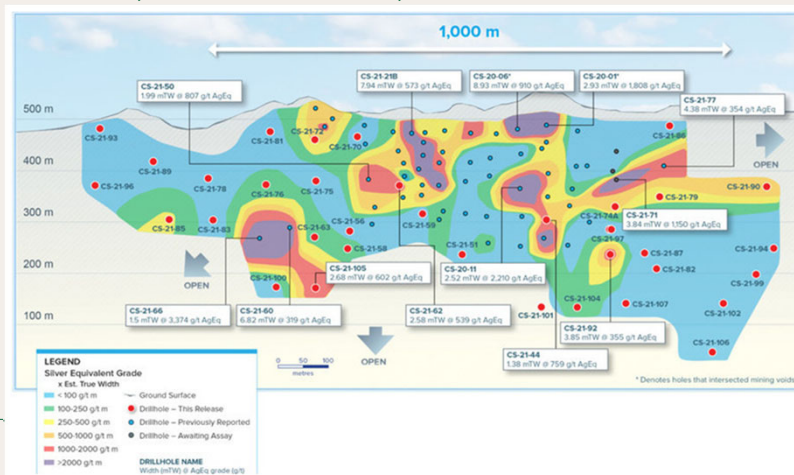


## Grade x Width

Gram-metres, g-m, Grade Thickness, Grade x Thickness, etc.

**When is this suitable for disclosure?**

- When disclosing geological interpretations or for illustrating vectoring
- If the disclosure of drillhole intervals are reported separately, and not used as a proxy for a model or values



112



## How can Grade x Width be misleading?

- Disclosure of Grade x Thickness (GxT) provides an unclassified quantity or an 'accumulation' of metal contrary to s. 2.3(1)(a) of NI 43-101
- A "larger" number is presented, than the factual assay for the interval (with no RPEEE)
- GxT also implies economic mineralization or a value contrary to s. 2.3(1)(c) of NI 43-101, and multiplying the GxT by a metal price will give a dollar amount to the drill intercept
- Does not consider impossible selective recovery, mining method, depths, costs, processing, etc.

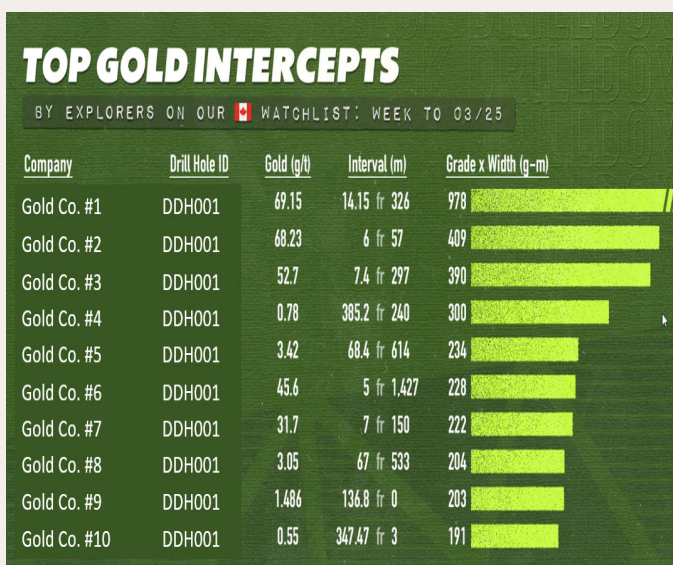
Au (ppm) x Length

Best Intercepts of the 2022 Program					
Hole ID	From	To	Au (ppm)	G x T	Length
2022_XX-01	38.65	45.65	87.3	611.2	7.00
including	38.65	40.1	411.5	596.6	1.45
2022_XX-01	81.15	89.45	215.7	1790.5	8.30
including	81.15	82.7	714.5	1107.5	1.55
including	87.75	89.05	505.6	657.2	1.30
2022_XX-02	211.15	224.8	61.8	843.1	13.65
including	212.1	213.05	565	536.8	0.95
including	218.65	220.25	116.1	185.8	1.60
including	221.45	222.45	56.9	56.9	1.00
including	222.85	223.6	34.2	25.6	0.75
2022_XX-03	33.65	46.35	78.5	996.7	12.70
including	34.7	35.65	31.8	30.2	0.95
including	37.45	39	454.7	704.7	1.55
including	42.85	43.85	202.9	202.9	1.00
2022_XX-04	68.8	76	247.7	1783.1	7.20
including	71.5	73.5	830.3	1660.6	2.00
including	74.35	74.9	201.4	11.8	0.55

113

## Grade x Width: Charts that Imply Value

- A drill intercept has no 'value' on its own; not selectively recoverable
- No explanation of the deposit, if there is a deposit. Was this down-dip or across mineralization?
- A single intercept says nothing about continuity, or volume of mineralization, mining methods, recoveries, costs or prospects for economic extraction
- Visually this offers a 'ranking' implying that one intercept is better than another



114



## Data Verification

### Defined Section 1.1 of NI 43-101

- The process of confirming how data was generated and that it accurately copied from the source: it is suitable for disclosure. Not just required in a technical report but required for all disclosure, see s. 3.2 of NI 43-101

### Item 12 of Form 43-101F1

- Requires a description of the procedures and steps taken by the QP to verify the data used in the technical report, including limitations or failures to verify data, and the QP's opinion on the adequacy of the data for the purpose of the technical report

### There is a link between Data Verification & the Current Personal Inspection

- Item 2(d) in Form 43-101F1 requires a description of the details of the current personal inspection on the property by each qualified person that may be integral to Data Verification

115

115



## Data Verification in a Technical Report

The level of data verification needs to reflect what the data supports

- No data verification **likely means** no mineral resource estimate

Describe the data verification steps by the QP

- What the QP did to verify the data used in the technical report
- Any limitations or failure to verify, and why
- QP's opinion on the adequacy of the data for the purposes of the technical report

Example of QP's opinion on data verification:

*"Based on the data verification performed, it is the QP's opinion that the collar coordinates, downhole surveys, lithologies, and assay results are considered suitable to support the mineral resource estimation"*



"Graph A is verified by Graph B. Graph B is verified by Graph C. Graph C is verified by Graph A. So you see...it's all verified."

Blackwell, 2018

116



## Examples of Data Verification Steps

### Current Personal Inspection:

- Locating Drill Hole Collars or Sampling Grids
- Logging and Sampling Procedures & Facilities Checks
- Core Storage & Handling Checks
- Inspection of drill core recovery and mineralization
- Confirmation sampling
- Laboratory visits, if considered appropriate

### Other:

- Transcription of Drill Collar Coordinates
- Down-hole deviation survey checks
- Review of survey reports
- Lithology and alteration – checking original drill logs
- Assay data – checking of original certificates
- Other Error Checking of data results

*"Assume nothing...check everything...trust no one" Harry Parker, AMEC - May 10, 2004*

117

117



## Current Personal Inspection – Importance

- It enables the QP(s) to be familiar with conditions on the property
- QPs can observe the geology & mineralization, verify the work done and, recommend an appropriate exploration or development program
- A current personal inspection is required even for properties with poor exposure
- It is the company's responsibility to arrange for a QP to carry out a current personal inspection



118

118



## Current Personal Inspection

### Qualified Person(s) may not self-exempt from a Current Personal Inspection

- At least one QP is required to conduct a current personal inspection (s. 6.2 of NI 43-101)
- Relief from a current personal inspection is only provided through a formal application for Exemptive Relief **BEFORE** filing the technical report

### However, CSA Staff do not think it is appropriate under any circumstance to consider exemptive relief for a current personal inspection for a technical report that discloses:

- An estimate of current mineral resources
- A preliminary economic assessment
- An estimate of current mineral reserves

**N.B.** Current personal inspections do not always need independence, s. 5.3 of NI 43-101

119

119

## Other Elements of Securities Law



120

120



## Securities Act

- An Act of the jurisdiction's legislature
- Sets up the jurisdiction's securities regulator and determines its powers
- Sets out procedural rules and rulemaking power
- Creates licensing of brokers and oversight of exchanges
- Makes general laws around distribution of securities
- Defines offences
- Creates civil liability for officers, directors, and experts

121

121



## General distribution and trading rules

- Distributing securities into the province's capital markets will normally require a prospectus, unless a distribution is exempt
  - Private companies, accredited investors, close business associates, etc.
- General regulation about mechanics of trades
- High-level continuous disclosure requirements
  - Prohibits trading on undisclosed information
- Offences
  - "Catchall" clause: any act that "contravenes...securities law"

122

122



## Rulemaking Power

- The Commission may make rules in respect of the following matters...and subjects are identified
- This is how National Instruments (and Multi-lateral Instruments, and Policies, etc.) are created
  - In practice, Staff of all the securities regulators get together to develop a single national rule, and the rulemaking authority in each province or territory then follows its Act to proclaim the new rule

123

123



## What rules look like

- **Instruments**
  - The legal text of the rule
  - The thing(s) that will be interpreted by a Commission panel or a court
- **Forms**
  - Forms for any filing the rule requires
  - The Instrument (which is the law) specifies that each Form be used
- **Companion Policies**
  - Major rules are normally written with a Companion Policy
  - These are guidance explaining how the rule should be interpreted
  - Policies do not have the force of law

124

124



## Prospectus Rules & Forms

### NI 41-101 General Prospectus Requirements

- No distribution of securities without a prospectus
- **Full, True, and Plain (FTP)** disclosure of all material facts
- Some distributions are exempt (private companies, accredited investors)
- Certification by issuer, underwriters, and promoters

### Prospectus Long Form 41-101F1

- **Full, True, and Plain** disclosure of all material facts
- If a **mining (or mineral exploration) company**, FTP means discussion of the company's **material mineral projects** in [Item 5.4](#) of the Form

125

125



## Continuous Disclosure Rule

### NI 51-102 Continuous Disclosure Obligations

- This is the securities rule a public company lives with day-to-day, governing how it keeps the market informed about its business
- The principle is that once a company is a reporting issuer, it must report regularly on its operations and finances, and episodically on any important new information
- Regular periodic disclosure (annually & quarterly)
- Immediately announce any material change by news release
- Acts prohibit trading on an undisclosed material change

126

126



## Continuous Disclosure Rule

Has multiple Forms that may contain *mineral project disclosure*:

- Form 51-102F1 Management Discussion and Analysis (MD&A)
- Form 51-102F2 Annual Information Form (AIF)
- Form 51-102F3 Material Change Report (MCR)
- Form 51-102F4 Business Acquisition Report (BAR)
- Form 51-102F5 Information Circular

Most other requirements do not really touch on mineral project disclosure

- Interim and annual financial statements

Forward Looking Information (FLI) & Future-Oriented Financial Information (FOFI)

- Must have a “reasonable basis”
- Must state the material factors or assumptions the information is based on
- **Projections under NI 43-101 and NI 51-101 are partly carved out**

127

127



## Continuous Disclosure Forms

Management Discussion and Analysis (MD&A) Form 51-102F1

- Quarterly, with interim and annual financial statements
- Item 1.4 “Discussion of Operations” always has some scientific or technical information from a mining company

Annual Information Form (AIF) Form 51-102F2

- Annual, information as at the end of the company’s financial year
- For companies with material mineral project interests, Item 5.4
  - **Item 5.4 is the perfect “summary” for a technical report**
  - **The AIF is a technical report trigger in NI 43-101**

Material Change Report (MCR) Form 51-102F3

- The rule instructs companies that have a material change to issue a news release *immediately*, and file a material change report within 10 days
- Generally, **a new resource or reserve estimate is a material change**

128

128





## Continuous Disclosure Forms

### Business Acquisition Form (BAR) Form 51-102F4

- Explains significant acquisitions to the market
  - “Significant” is based on revenue and/or asset tests in the rule
- Might need valuation information – and ***this could be scientific or technical information on a mineral project***

### Information Circular Form 51-102F5

- If the corporation calls a security-holders meeting, it must file an information circular
- Item 14, “Particulars of Matters to be Acted Upon” ***could include mineral project disclosure*** – typically shareholder approval for an acquisition
- Must have “sufficient detail” for a “reasoned judgement” on a vote
- Significant acquisitions may need prospectus-level disclosure – and ***if that is a mineral property, that means Item 5.4 of the AIF again and a technical report trigger***

129

129



## Other Prospectus Rules

### NI 44-101 Short Form Prospectus Distributions

- For companies that are already reporting issuers
- The company needs to have a complete and current Continuous Disclosure record
- Form 44-101F1
  - Must have filed an Annual Information Form 51-102F2
  - Needs certified **Full, True, and Plain** disclosure
  - Company incorporates Continuous Disclosure by reference in the Prospectus

### NI 44-102 Shelf Distributions

- Another Short Form distribution using the same form

***Both can trigger a technical report if there is mineral project information***

130

130



## Business Combination Rules

### NI 62-104 *Takeover Bids and Issuer Bids*

- Rules govern timing, market actions, obligations of bidder and target
- But also: Five different Forms from bidder or target company
  - Must have the material information security holders need to make their decisions on tendering
  - ***That could be mineral project information***
  - ***Bid circulars are a technical report trigger in NI 43-101 (s. 4.2 (1)(i))***
  - Other circulars (like a director's circular) ***may have mineral resource or reserve estimates that trigger a technical report***

### MI 61-101 Protection of Minority Shareholders in Special Transactions

- The law in AB, SK, MB, ON, QC, NB
- ***May require a valuation, which is a technical report trigger in NI 43-101***

131

131



## Summary

- The Mining Rule, NI 43-101, tells you how to disclose information about a mineral project, milestone driven
- But other securities legislation – the Securities Act, and rules made under the authority of the Act, instruct public companies on when to disclose information and what that information should be
- The Continuous Disclosure rule, NI 51-102, is the rule that will most often affect your work, because it's the one that governs routine disclosure by a company in the resource industry
  - Periodic disclosure, like the MD&A and the Annual Information Form (AIF)
  - There is also episodic disclosure, like Material Change Reports
- Rules governing prospectuses and bid documents also require companies to disclose information about *mineral projects* or *oil & gas assets*
  - If something requires "Prospectus-level disclosure" it must be ***Full, True, and Plain***

132

132



## Secondary Market Liability: Lessons and Strategies for Experts

Presented by:



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133



## Securities Law – what is it?

- Provincial regulators and legislation with some coordination of policy
- Commissions take jurisdiction by province and by agreement
- Intended to protect the public and create orderly capital markets
- Most people and professions are able to ignore securities law completely in their day to day lives
- Most of the securities laws and policies are procedural and bland, however the media headlines related to securities law are salacious examples of humans acting badly
- Public companies have entire teams devoted to compliance, capital raising activities, and disclosure
  - Continuous disclosure
  - Material event disclosure

134

134

## Secondary Market Liability - “SML”

### What is it?

- Securities legislation designed to protect the public from both bad acting and disengaged professionals, extending past the original primary market protections for investors
- A skeptic might consider it a statutory mechanic for fining individuals for mistakes or poor practice
- In BC, it is Part 16.1 of the Securities Act
- In Ontario, it is Part XXIII.1 – Civil Liability for Secondary Market Disclosure of the Securities Act
- A similar statutory scheme for secondary market liability was introduced in the US in 2002, with the passage of the Sarbanes-Oxley Act of 2002, Pub.L. 107-204, 116 Stat. 745
- Jurisdiction will vary based on your clients, but Canadian laws are substantially the same
- Investors have a statutory right of action where they acquired or disposed of securities while there was an uncorrected misrepresentation in a document or a public oral statement or while there was a failure to make timely disclosure of a material change as required by the Securities Act.
- But what is it, actually? Let's do an example.

135

135

## Who Does SML Catch?

1. The responsible issuer
2. Directors and officers of the responsible issuer
3. Influential people of the responsible issuer
4. People that make statements with actual, implied or apparent authority for the responsible issuer
5. Experts

### Experts

A person whose profession gives authority to a statement made in a professional capacity by the person, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer.

- Not the same as a qualified person
- You're an expert the first day you are registered with your professional designation

### Influential Person

- Control person, promoter, insider that is not a director or officer, investment fund manager (if responsible issuer is an investment fund)

136

## What Does SML Catch?

### Focus on Experts

Experts can be liable where:

- A core or non-core document containing a misrepresentation, or
- A public oral statement containing a misrepresentation is released or made by the responsible issuer or by an influential person (or by a person with actual, implied or apparent authority to act or speak on behalf of the responsible issuer or influential person, as the case may be), if each of the following is also true:
  - the misrepresentation is also contained in a report, statement or opinion made by the expert;
  - the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert; and
  - the expert either released the document or made the statement itself or consented in writing to the use of the report, statement or opinion in the document or public oral statement.

This is only a subset of the scope of liability under SML, and we're not going to cover branches not applicable to experts today.

137

137



## Underlying Definitions

**Release** means to file with a securities commission or to otherwise make available to the public.

**Misrepresentation** means:

- a) an untrue statement of a material fact; or
- b) an omission to state a material fact that is:
  - i. required to be stated, or
  - ii. necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made

**Document** means a paper or electronic filing:

- that must be or is voluntarily filed with a securities commission
- that is required by securities law to be filed with the corporate registry or that is required to be filed with a stock exchange
- which would reasonably be expected to affect the market price or value of a security of the responsible issuer

**Core Document** means the largest, most significant documents like a prospectus, an annual report, a proxy circular, financial statements, or material change reports. Core Documents are specifically listed in the *Securities Act*

138

138

## Material Facts

Material fact means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities of an issuer.

- Material fact is broader than the legislative concept of material change (material change being a change in the internal business, operations or capital of a company).
- A new material change in, for example, resources or reserves requires a new tech report.
- A new material fact requires a press release.
- Reports, statements and opinions of experts related to material facts may not be subject to the same internal oversight (at the expert's firm) as full tech reports.
- What does this mean? You don't need to go back in time and revise a tech report to deal with a new material fact. That new material fact is addressed in other disclosure documents and you may or may not be involved.

139

139

## What is the High-Level Process for a Claim?

1. A misrepresentation is identified.
2. Someone is invested enough to pursue a claim.
3. Canada has a strike suit barrier - claim must be certified.
4. Claim proceeds until decided or settled.

140

140

## Canada's Strike Suit Barrier

### Part I

- Strike suit barrier: a plaintiff must obtain court approval to proceed with an action
- To obtain leave, a plaintiff must establish:
  - The action is brought in good faith
  - There is a reasonable possibility that the plaintiff will succeed
- Gatekeeping function: very few cases progress beyond the leave stage
  - 2012 study by NERA: of 35 secondary market liability actions filed, only 2 progressed beyond leave stage
  - *Wong v. Pretium Resources Inc.*, 2021 ONSC 54 – first trial decision on the merits

141

141

## Canada's Strike Suit Barrier

### Good faith

- Claimant is bringing their action in the “honest belief that they have an arguable claim, and for reasons that are consistent with the purpose of the statutory cause of action”: *Silver v. IMAX* (2009), 66 BLR (4th) 222 (ON SC)
- Good faith is a low barrier to meet because:
  - There doesn't have to be any kind of knowledge or belief in the investment, or knowledge about the investment, on the part of the investor. SML is not for the participants in your 'family and friends' rounds, it is for strangers around the world.
  - There is not much actual case law on this aspect of the strike suit barrier, it seems to be assumed with the facts and accepted by all parties that make it to trial.
  - Perhaps bad faith cases don't even make it this far, so we won't ever see cases or decisions turning on this point.

142

142

## Canada's Strike Suit Barrier

### Preliminary merits

- Is there a “reasonable possibility” that the plaintiff will succeed?
  - Not a trial on the merits, but an investigation into whether there was something that could reasonably possibly be a misrepresentation, and whether there are plaintiffs who lost money during the misrepresentation period.
  - Evidentiary threshold: both prospective plaintiff and defendant will have to file affidavit evidence
  - Provide credible evidence that permits the court to conclude the claimant has more than a de minimis possibility of succeeding at trial
  - Defendant has a correspondingly high evidentiary burden to dissuade the court to grant leave
  - Used by the court to evaluate scope of the claim (i.e. allowing two claims of misrepresentation out of 20 to proceed to trial)

143

143

## What happens to certified claims?

- **Timeline – litigation is a time-consuming process**
  - Motion for leave - preparation of affidavits, cross-examination of witnesses, scheduling
  - Typically will take years to get to trial
  - Limitation periods
- **Procedural Issues**
  - Serve and file affidavit evidence setting forth material facts – not an obligation for defendants
  - Potential witnesses
- **Impact on your day-to-day life and profession**
  - Litigation is often time-consuming and stressful
  - Reputational concerns

144

144



## What Needs to be Proven in Court?

### Part I

#### What does a claimant need to prove?

For a Core Document:

- There was a misrepresentation in the market and a loss to the investor while that misrepresentation was not identified. The misrepresentation is in: a report, statement, or opinion.

For any other Document or a public oral statement:

- There was a misrepresentation in the market and a loss to the investor while that misrepresentation was not identified. The misrepresentation is in: a report, statement, or opinion.

Interesting to note that, for any other Document or a public oral statement, where the defendant is not an expert, the defendant is provided with an additional degree of protection, and the claimant must also prove any one of these three things:

- a) The defendant knew that there was a misrepresentation at the time that the document was released or public oral statement was made.
- b) The defendant deliberately avoided acquiring knowledge that the document or public oral statement contained a misrepresentation at or before the time that the document was released or the public oral statement was made.
- c) The defendant engaged in gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

145

## What Needs to be Proven in Court?

### Part II

#### Damages

Two ways of calculating damages for SML:

- 1) Where a buyer paid too much for the stock

and

- 2) Where a seller received too little for the stock

- In both cases, there is a prescribed formula to measuring what the investor lost, and it can be a crystallized loss, an average market loss from the stock movement at the time the misrepresentation became known, or a fictional loss where the investor did not dispose or acquire but still experienced the market loss in value due to the misrepresentation.

What about other market factors, like the index or industry falling at the same time?

- The defendant is not responsible for paying damages with respect to lost value that it can prove was unrelated to the misrepresentation or failure to make timely disclosure of a material change. This would include other things going on at the responsible issuer, in the industry, and in the world.

146

## What Don't They Need to Prove?

### What don't they need to prove?

- Knowledge or Reliance
  - There is NO reliance requirement for misrepresentations by experts. It doesn't matter that the secondary market did not read your report, or even know they held the stock in question. Liability doesn't require the investor to be aware of anything, or to have turned their mind to your work.
- Malicious Intent, Bad Acting.
  - There is also no requirement for an expert to have a culpable state of mind. You don't need to be a bad actor. A misrepresentation action is distinct from any additional fraud or criminal claim where intent is considered.

147

147

## Settle or Trial, and Wrapping Up

### Settlements

- Most cases settle; very few actions which have been granted leave have proceeded to trial

### Trial verdicts and appeals

- Right of appeal after trial
- Experts - Financial penalties under the *Securities Act*
  - The HIGHER of \$1M and what you or your firm made off of the issuer and its affiliates in the prior twelve months
- For directors and officers of the issuer, it is the higher of \$25,000 and 50% of the last year's compensation from the issuer group
- However, no limits for any group if the defendant knew the material fact was a misrepresentation when they authorized, permitted, or acquiesced in the release of the material fact

148

148

## Defenses for Experts

1. Due Diligence
2. Properly Qualified Forward Looking Information
3. They Already Knew
4. Reliance on Experts
5. Unauthorized Release or Revoked Consent
6. Corrective Action

149

149



## Defences for Experts

### Due Diligence

Due Diligence (section 138.4(6) of the Securities Act)

- Before the release, the expert has conducted or caused to be conducted a **reasonable** investigation, and
- At the time of release, the expert had no reasonable grounds to believe that the document or oral statement contained the misrepresentation.

In assessing reasonableness, a court must consider all relevant circumstances, including:

- the knowledge, experience and function of the person or company;
- in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;
- the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement

150

150

## Defences for Experts

### Forward Looking Information – “FLI”

**There is a specific defence** for forward looking information in your tech reports. It is in section 140.4(9) of the BC *Securities Act*.

The defence only covers misreps in the forward looking information, and requires three things:

- 1) Reasonable cautionary language included in the document proximate to (beside) the FLI that identifies the FLI and the material factors that could cause the actual results to differ from your conclusion, forecast, or projection
- 2) A statement of the material factors or assumptions that were applied in the work
- 3) That the expert had a reasonable basis for drawing the conclusion or making the forecast or projection set out in the FLI

What you'd need to focus on to have a defence for a misrep in your FLI is ensuring the best practice cautionary language is included in each report and press release and update. Make sure you know what cautions are needed for your statements, and then, don't rely on others to put the disclaimers in, do it yourself. If you do it right, you've got a full defence for those FLI statements.

151

151

## Defences for Experts

### Forward Looking Information – Climate Change Scrutiny

- As a future point of interest, there has been increasing attention to cautionary language in FLI statements relating to climate change. Several Canadian issuers have adopted and publicized climate-related objectives, including targets to cut greenhouse gas emissions. Such objectives are often integrated as FLI in a number of public documents.
- There are secondary market liabilities in this specific context, and many issuers have enhanced their cautionary language for forward-looking statements to better address climate-related statements. We expect this trend to grow in the coming years.
- If you come across statements related to climate change in FLI, scrutinize and enhance the accompanying cautionary language to mitigate potential legal risks. Stay informed about evolving regulations and industry best practices in addressing climate-related forward-looking statements.

152

152

## Defences for Experts

### They Already Knew, and Reliance on Experts

#### They Already Knew

1. At its core, conflicts with the requirement that an action is brought in good faith.
2. This particular defence and potential conflict hasn't made it to trial or been discussed by the courts in detail yet.
3. It's knowledge that the material fact was a misrepresentation that counts, not simply knowledge of the material fact. So they need to know the fact is wrong, or a fact was required and was omitted.

#### Reliance on Experts

##### -this is not for experts but is worth noting-

1. All other persons that have liability under the SML regime have a full defence if they relied on the work of an expert, and they did not know or have reasonable grounds to know about the misrepresentation.
2. This emphasizes the role of experts, and geos, as gatekeepers of the market – market integrity relies on expert skills to maintain the market integrity.

153

153

## Defences for Experts

### No Consent or Corrective Action

#### No Consent

- Was never given,  
or
- Was revoked – meaning that prior to the release of the document or to the making of the public oral statement, they had withdrawn their prior written consent, provided that this withdrawal was in writing.

#### Corrective Action Taken

In general, potential defendants are not liable with respect to misrepresentations made without their knowledge or consent if they take prompt corrective action by promptly advising the board of directors of the responsible issuer of the misrepresentation or failure, and, if no correction or disclosure is made within two business days, promptly advising the BCSC in writing of the misrepresentation or failure.

Defendants who are prohibited by law or professional confidentiality rules from disclosing this information to the BCSC are not required to make disclosure to the BCSC in order to satisfy the defense. *Check your professional code and confidentiality rules.*

154

## Tools to Consider for Your Practice

- Code of Ethics and Professional Governance Act
- Use cautionary language of Forward Looking Information
- Speak up once misrepresentation is detected
- Monitor your past work and clients

155

155

## Questions?



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156

156

# How to Navigate a Disclosure Review



157

## Types of Disclosure Reviews



### 1) Prospectus Review

A Prospectus is a key investor protection tool:

- Prospectus must provide **Full, True, and Plain** disclosure of all material facts
- Officers, Directors, Underwriters, and Experts (i.e. QP) may be liable for any misrepresentation

#### Forms of Prospectus offerings:

- Long Form (including Initial Public Offering & Non-Offering)
  - Initial comment letter sent within **10 business days**
- Short Form (including Short Form Base Shelf Offering)
  - Company incorporates by reference previously filed documents into prospectus
  - Initial comment letter sent within **3 business days**

**TIP: Use of Proceeds needs to align with technical report recommendations**

158

158



## Types of Disclosure Reviews

### 2) Continuous Disclosure (CD) Review

#### Main objectives

- Compliance - Assess the company's technical disclosure for compliance with the rules
- Education - Help companies understand their disclosure obligations

#### It is a **Full review**

- Broad in scope and based on selected risk criteria
- Review of website, news releases, AIF, MD&A, technical reports, social media, etc.

### 3) Issue or Targeted review

Focused on a specific technical issue based on complaints, news releases, etc.

159

159



## Disclosure Review Process


### Formal comment letter is sent electronically to a company

- Outlines specific disclosure concerns, tied to the Instrument or Form specifically
  - Requests the company explain, clarify, or remove disclosure, or other corrective action
- Staff may comment on issues such as:
- Non-compliance with NI 43-101, or disclosure not based on industry best practices
  - Website disclosure that includes economic projections unsupported by a technical report
  - Technical reports that do not comply with Form 43-101F1
- Company is generally requested to respond in writing within **5-10 business days**
  - Disclosure review process may involve multiple comment /response letters
  - Staff may also conclude that the company is in "default" of a specific filing obligation


160

160





## Sample Comment Letter



**British Columbia  
Securities Commission**

December 4, 2023

The Corporate Finance Department of the British Columbia Securities Commission has selected your company for a technical disclosure review.

The purpose of our review is to assess the Company's disclosure practices and overall level of compliance. Based on this review, BCSC staff has concluded that the Company is in default (the Default) of certain NI 43-101 continuous disclosure obligations.

Failure to file a technical report

Disclosure on the Company's website of economic projections and outcomes triggered the filing of a technical report to support the economic analysis disclosure. Examples of the economic analysis on the Company's website not supported by a technical report include:

September 2023 investor presentation on the "Golden Fantasy" project which discloses ...

**DETAILS OF ISSUES FOUND IN DISCLOSURE...**

The Company must file a technical report within 10 business days.


If it is unable to provide a suitable report within this timeframe, the Company must issue a clarifying news release. The news release should state that the estimates are not supported by a compliant NI 43-101 technical report, contrary to NI 43-101, and that the estimates should not be relied on until they have been verified and supported by a technical report. Please provide a final, fully executed copy of the revised Report for our review prior to filing.

Please preface the clarifying news release with the following:

*"As a result of a review by the British Columbia Securities Commission, we are issuing the following news release to clarify our disclosure."* Please provide us with a copy of the news release for our review before the Company disseminates it.

In addition, the Company must amend its website, social media pages and other investor relations materials to correct the above issues and remove any other non-compliant or misleading information. Please provide a written response to our letter within two weeks. Also, provide a copy of this letter to each member of the company's board of directors and confirm specifically in your response that you did this.

161



## Dealing With The Regulator

Do	Do not
✓ Read the rules before you call the regulator or respond to Staff comments	✗ Assume that a strong offense will be a good defense
✓ Address the regulator's concerns – cooperation isn't necessarily capitulation	✗ Justify your disclosure because someone else did it that way
✓ Provide proposed solutions to deal with the disclosure issues – we may agree	✗ Think that your situation is unique, and compliance is not required
✓ Remember that NI 43-101 applies to all written disclosure, not just formal filings	✗ Take the position that capital and operating costs & economic analysis are not "scientific and technical information"

162

162



## Top 5 Disclosure Deficiencies: NI 43-101

- 2.4** Disclosure of Historical Estimates
  - Lack of source and date, main assumptions if known, cautionary language
- 3.3** Requirements for written disclosure of exploration information
  - Missing assay procedures, name of lab, QA/QC, true widths, higher grade intervals
- 2.2** All disclosure of mineral resources or mineral reserves
  - No resource and reserve categories, only reporting contained metal, adding inferred
- 3.2** Written Disclosure to Include Data Verification
  - No discussion of what the QP has done to verify the data
- 2.3** Restricted Disclosure
  - Omitting PEA caution for inferred, exploration target ranges, and gross metal values

163

163



## Top 5 Disclosure Deficiencies: Form 43-101F1

- Item 3:** Reliance on Other Experts
  - Must be limited to reliance on legal, political, environmental, or tax (not technical)
- Item 12:** Data Verification
  - Lack of data verification by the QP, and lack of QP's opinion on adequacy of the data
- Item 11:** Sample Preparation, Analyses & Security
  - Missing QA/QC info., assay & analytical procedures, name of lab, sample preparation
- Item 10:** Drilling
  - Missing location, azimuth, and dip of drill holes, true widths, higher grade intervals
- Item 23:** Adjacent Properties
  - Lack of cautionary language, properties of the issuer

164

164



## What Happens if Disclosure doesn't comply?

NI 43-101 is enforceable under the Securities Act

### Possible outcomes:

- News release clarifying and/or retracting previous disclosure
- Amending and refiling a technical report
- Filing a technical report that should have been filed earlier
- Company placed on the default list
- Cease trade order or management cease trade order
- Referred to enforcement for further investigation

### Other possible outcomes:

- Class action lawsuit filed under civil liability provisions of the Securities Act
- Complaint forwarded to the QP's professional association

165

165

## What's Next for Mineral Project Disclosure



166

166



## CSA Recent Highlights

- SEDAR+ Launch
- Staff Changes in the mining technical staff
- Consultation Paper 43-401 with 38 questions on NI 43-101 et al.
- Presentation & Proposal to Chief Executives at the CSA
  - Highlighting the importance of mining/exploration to the Canadian capital markets
  - Proposal to modernize & enhance NI 43-101
  - Approved late October 2023

167

167



## National Instrument 43-101 Policy Project

End of October 2023 – New Policy Project to modernize & enhance NI 43-101, Form 43-101F1, & Companion Policy 43-101CP approved by CSA

**NOT** intended to be major changes or a full re-write of the rule!

- Supported by Staff compiled data, reviews & consultation paper responses

Both Targeted & Public Consultations will be part of the process

Focus to be on clarity, efficiency, and more specifically the length of technical reports

168

168



## 12 Topics for Feedback & Comment

- |                                     |  |
|-------------------------------------|--|
| A. Improvement & Modernization      | G. Exploration Information                       |
| B. Data Verification                | H. Mineral Resource / Mineral Reserve Estimation |
| C. Historical Estimates             | I. Environmental & Social Disclosure             |
| D. Preliminary Economic Assessments | J. Rights of Indigenous Peoples                  |
| E. Qualified Person Definition      | K. Capital / Operating Costs & Economic Analysis |
| F. Current Personal Inspections     | L. Other Comments on NI 43-101                   |

169

169



## Areas being considered - 1

### A. Improvement and Modernization of NI 43-101

- Consider, where appropriate, providing alignment of NI 43-101 disclosure requirements with others (S-K 1300, JORC, CRIRSCO Template, etc.)
- Exploration targets, equivalent grades, addition of inferred etc.

### B. Data Verification

- Clarification, if necessary

### C. Historical Estimates

- Consider providing guidance on how to disclose a “previous estimate” done by the same issuer on its mineral project

### D. Preliminary Economic Assessment

- The definition of preliminary economic assessment (PEA)

170

170



## Areas being considered - 2

### E. Qualified Person Definition

- Consider modifying or clarifying the criteria in the definition of a qualified person and provide additional guidance

### F. Current Personal Inspection

- Consider removing the seldom used site visit deferral for seasonal weather conditions

### H. Mineral Resource / Mineral Reserve Estimation

- Consider requiring disclosure of specific information for “[reasonable prospects for eventual economic extraction](#)”
- CSA Staff Notice 43-311 Review of Mineral Resource Estimates in Technical Reports (June 4, 2020)

171



## Areas being considered - 3

### I. Environmental & Social Disclosure

- Consider requiring disclosure in all technical reports, including for exploration stage projects
- Some commentors suggested that ESG disclosure should form part of the issuer’s ongoing disclosure in an annual ESG document and should not be mandated in a technical report

### J. Rights of Indigenous Peoples

- Consider requiring specific disclosure in technical reports about the mineral project with respect to Rights of Indigenous Peoples and the relationship of a company with Indigenous Peoples

172

172



## Areas being considered - 4

### K. Capital and Operating Costs, Economic Analysis

- Consider adding more specific disclosure requirements in Item 21: Capital and Operating Costs

### L. Other Aspects for Improvement of NI 43-101

- Many comments were provided that are under consideration

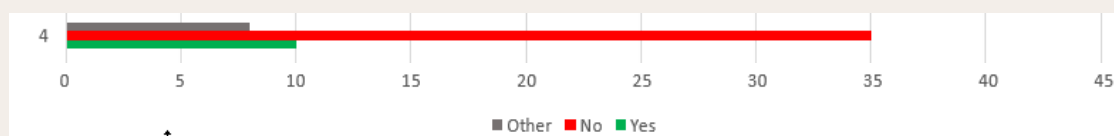
173

173

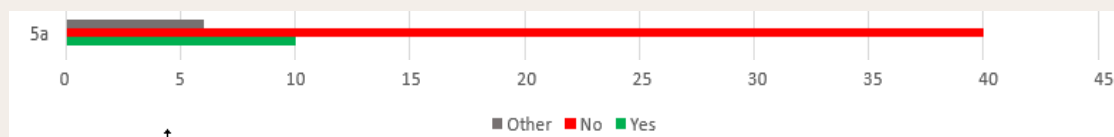


## SN 43-401 Gave some Clear responses

A.Q4) Should we consider reducing the 45 days filing period?

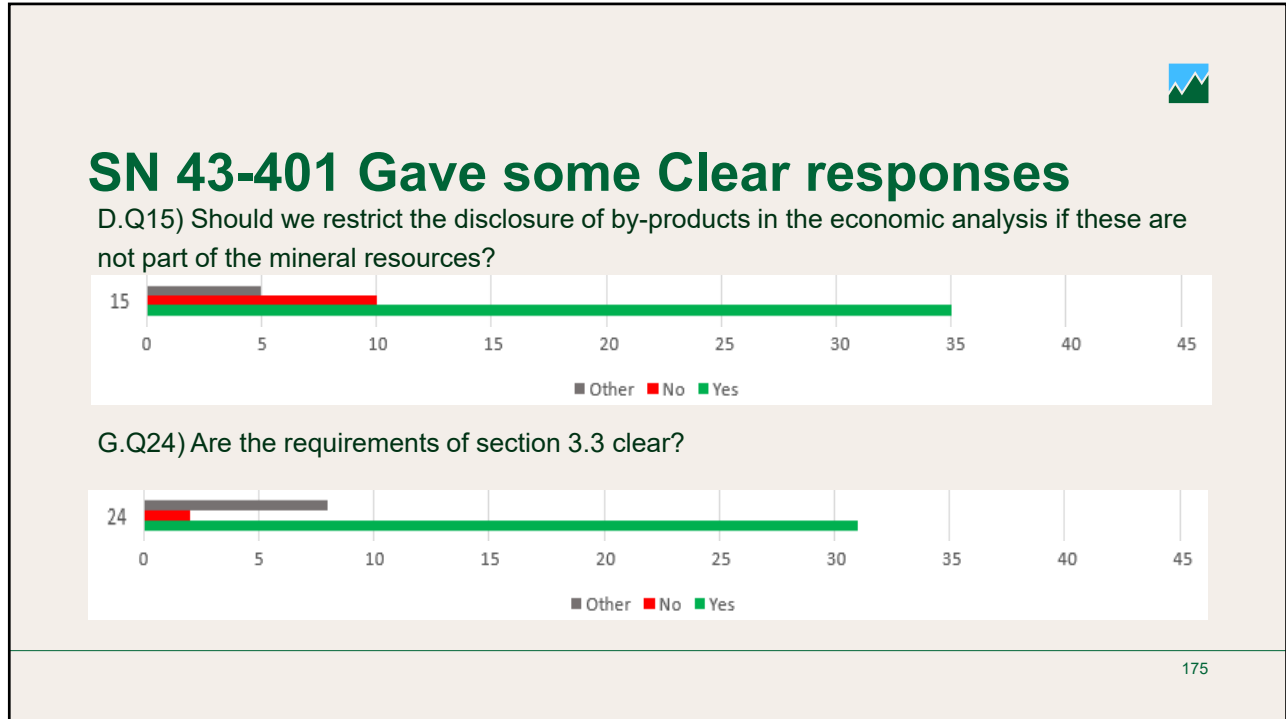


A.Q5a) Can investor protection still be achieved through remote technologies rather than boots on the ground current personal inspection:

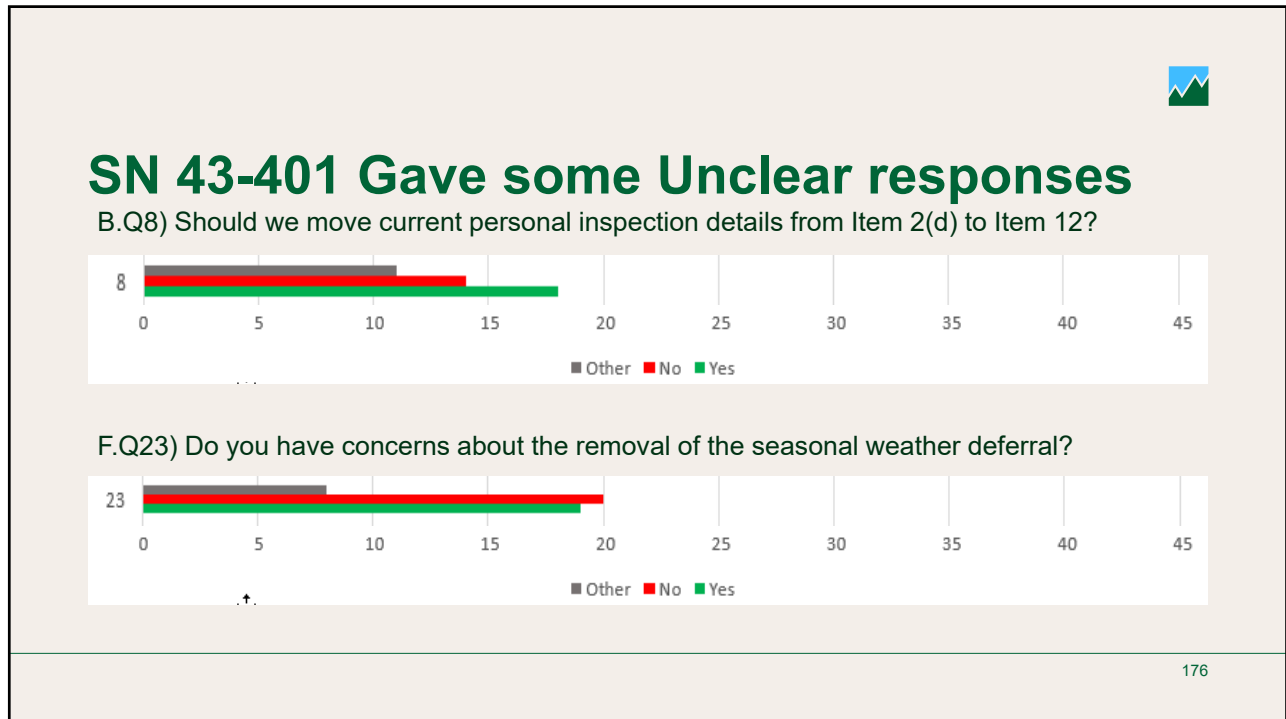


174

174



175



176





## More to Come

- We have only started this process
- We have a lot more work to do
- This will not be done without public input
  - We will also rely on CIM and our advisory panels to offer ideas, opinions & guidance
- We will continue to conduct short courses & presentations – there will be more when any revisions are rolled out
- Please pick up the phone or email questions or concerns at anytime

177