BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re New Point Exploration, 2023 BCSECCOM 170 Date: 20230414

Bam Bam Resources Corp., formerly known as New Point Exploration Corp., and Bryn Gardener-Evans

Panel	Gordon Johnson	Vice Chair
	Deborah Armour, KC	Commissioner
	James Kershaw	Commissioner
Hearing dates	June 3, 2022 and November 29, 2022	
Submissions completed	November 29, 2022	
Date of Findings	April 14, 2023	

Appearing

Derek Chapman Audrey Tait	For the Executive Director
Bryn Gardener-Evans	For Bryn Gardener-Evans

Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, RSBC, c. 418 (Act).

[2] In a notice of hearing issued September 17, 2021 (2021 BCSECCOM 291), the executive director alleged, among other things, that:

(a) When Bam Bam Resources Corp. (Bam Bam) was known as New Point Exploration Corp. (New Point), it issued two news releases (collectively, the News Releases) on July 6, 2018, and August 9, 2018 that contained misrepresentations.

(b) The July 6, 2018 news release (July 6 News Release) announced that it closed a private placement for aggregate proceeds of $1,668,250. It did not disclose to investors that New Point would retain less than 43% of the funds because most of the money was either already spent on or owed to consulting fees (Consulting Fees). As a result, the July 6 News Release was a misrepresentation, contrary to section 50(1)(d) of the Act.

(c) The August 9, 2018 news release (August 9 News Release) announced that it closed a private placement for aggregate proceeds of $4,651,000. It did not disclose to investors that New Point would retain less than 15% of the funds raised from a private placement because most of the funds were either already spent on or owed to Consulting Fees. As a result, the August 9 News Release was a misrepresentation, contrary to section 50(1)(d) of the Act.

(d) New Point filed material change reports containing the misrepresentations from the News Releases and therefore filed false or misleading statements, contrary to section 168.1(1)(b) of the Act.

(e) As director, president, and CEO of New Point, Bryn Gardener-Evans (Gardener-Evans) authorized, permitted or acquiesced in New Point's contraventions of section 50(1)(d) and section 168.1(1)(b) and therefore contravened the same provisions as New Point pursuant to section 168.2 of the Act.

[3] During the hearing, the executive director called one witness, the Commission investigator. Gardener-Evans, who was self-represented at the hearing, did not cross-examine the investigator, did not call any witnesses, and elected not to testify.

[4] In this decision, we predominantly refer to the corporate respondent as New Point, as that was its name during the majority of the relevant events, prior to changing its name as outlined below in paragraph 29. However, at times we refer to the corporate respondent as Bam Bam, as it is the same corporate entity.

II. Preliminary Application-Intervenor

[5] On May 13, 2022, PreveCeutical Medical Inc. (PreveCeutical) and Stephen Van Deventer (Van Deventer) submitted an application to be an intervenor in the New Point hearing.

[6] On May 20, 2022, the executive director responded to PreveCeutical and Van Deventer's application. PreveCeutical and Van Deventer replied to the executive director's response on May 25, 2022.

[7] On May 27, 2022, the panel sent an email to PreveCeutical and Van Deventer dismissing their application with reasons to follow. These are those reasons.

Test for intervener status

[8] BC policy 15-601 – Hearings provides guidance on intervener applications. Section 7.6 states:

> A person who is not directly affected by a decision, but who wants to be granted intervener status in a review must apply to the Commission and identify why it is in the public interest for the Commission to exercise its discretion to grant the application. On an intervener application, the Commission balances the efficiency of the proceedings with affording the opportunity to persons with relevant evidence to make submissions and have the opportunity to be heard. The Commission may consider submissions from all the parties.

[9] The OSC panel in *Magna International Inc. et al.*, 2010 ONSEC 12 stated, at para. 44, that factors to consider in an application for leave to intervene are:

(a) the nature of the matter;
(b) the issues;
(c) whether the person or company is directly affected;
(d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;
(e) any delay or prejudice to the parties; and
(f) any other factor the Panel considers relevant.

[10] The OSC panel in *Magna*, at para. 52, noted that if intervener status is to be granted, the intervener should advance a unique position that may otherwise not be before a panel:

> In considering whether a proposed intervenor will make a useful or unique contribution to the proceedings, the Commission will consider whether the proposed intervenor will advance evidence or arguments that may not otherwise be presented. Where a party with standing can adequately advance a position, interventions may be neither helpful nor necessary [citations removed].

[11] The BC Court of Appeal in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCCA 282, at paras. 14 – 15, provided a test regarding when to grant intervenor status:

> [14] There are generally two routes to intervenor status. First, an applicant can show a direct interest in the outcome of the proceeding. None of the proposed intervenors in this case have a direct interest. They must rely on the second route, which is available to applicants with a public interest in a public law issue. The legal criteria that apply to intervenor applications under this second route are well settled and may be summarized as follows:
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> a) Does the proposed intervenor have a broad representative base?
> b) Does the case legitimately engage the proposed intervenor's interests in the public law issue raised on appeal?
> c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?
> d) Does the proposed intervenor seek to expand the scope of the appeal by raising issues not raised by the parties?
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> [citations removed]
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> [15] I would add to these established criteria that the court may, where appropriate, give consideration to factors relating to the orderly and efficient administration of justice…

Analysis and conclusions regarding the intervenor application

[12] It is not uncommon that at any particular time different panels of the Commission will have before them cases arising from very similar fact situations and requiring

interpretations of the same statutory provisions. If respondents in such proceedings are generally permitted to participate in each other's proceedings in order to introduce evidence or make legal arguments there will be a significant administrative disruption added to many of those proceedings and certainly to the hearing system as a whole.

[13] Although the guidance provided in Policy 15-601 is relatively general, we conclude that the public interest analysis mandated by that guidance includes a reference to the types of factors which are important to both the Ontario Securities Commission and the Canadian Courts.

[14] In this case, it is fair characterization that the reason for the proposed intervention was to assist this panel in correctly interpreting the Act and in correctly interpreting the evidence. The applicants also expressed concern that any precedent set in this proceeding would be binding, or at least influential, in its subsequent hearing, perhaps to the applicant's prejudice. We do not find those arguments persuasive.

[15] It is the responsibility of each panel to correctly interpret the law, and any conclusions of law reached by a panel are subject to review by the British Columbia Court of Appeal on a correctness standard. See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653.

[16] Although all panels, including this panel, will look to the Commission's own precedents for guidance, all panels must also consider alternative legal arguments raised in other proceedings and reach what they consider to be correct legal conclusions in light of *Vavilov*. As a result, the applicants will be in a position to fairly advance their own arguments and will not be prejudiced if they can only advance those arguments within their own proceeding.

[17] In addition, we agree with the executive director that, although the general fact patterns between this proceeding and the PreveCeutical proceeding have many similarities, the factual conclusions in each case must be decided based on a detailed analysis of the individual facts of each proceeding. As a result, again, the applicants will not be prejudiced if their evidentiary input is confined to their own proceeding.

[18] We do not consider that the applicants have a unique and different perspective to present in this proceeding. We do not see any public interest perspective that the applicants represent. We disagree that the added input of the applicants would be helpful, at least not to the degree that balances against the added administrative burdens that arise. Those administrative burdens are real, both in terms of extending the expected duration of this particular proceeding and in terms of how often there would be significant interventions if we lower the standard for interventions to the degree proposed by the Applicants.

[19] As noted above, we dismissed that application for intervenor status.

III. Background

A. *Procedural History*

[20] The notice of hearing was issued on September 17, 2021 (2021 BCSECCOM 291), naming New Point, Gardener-Evans, and Norman George Wilfred Wareham (Wareham) as respondents.

[21] At a set date hearing on October 13, 2021, the hearing was set to commence May 30, 2022, for seven days.

[22] The executive director and Bam Bam entered into a settlement agreement on May 27, 2022, in which Bam Bam admitted liability for the following narrowed allegations:

> • New Point made a statement in its July 6, 2018 news release, containing an omission of a material fact, that it *ought reasonably to have known was a misrepresentation* contrary to section 50(1)(d) of the Act;
>
> • New Point filed a material change report containing the same omission and, in doing so, it made a statement in a record filed under the Act that in a material respect *omitted facts necessary to make that statement not misleading*, contrary to section 168.1(1)(b) of the Act;
>
> • New Point made a statement in its August 9, 2018 news release, containing an omission of a material fact, that it *ought reasonably to have known was a misrepresentation* contrary to section 50(1)(d) of the Act; and
>
> • New Point filed a material change report containing the same omission and, in doing so, it made a statement in a record filed under the Act that in a material respect *omitted facts necessary to make that statement not misleading*, contrary to section 168.1(1)(b) of the Act.

[23] On May 27, 2022, Wareham entered into a settlement agreement with the executive director (2022 BCSECCOM 187). In the settlement agreement, Wareham admitted New Point's contraventions of sections 50(1)(d) and 168.1(1)(b) of the Act as narrowed in the above paragraph. He also admitted that he contravened the same provisions by operation of section 168.2. In the settlement agreement, Wareham undertook to pay $10,000 to the Commission and he agreed to certain limited market prohibitions for a period of three years.

[24] On May 27, 2022, an order was issued against Wareham (2022 BCSECCOM 186) with the three year prohibitions. The executive director discontinued the proceedings against Wareham (2022 BCSECCOM 188) the same day.

[25] On May 30, 2022, the hearing commenced. Counsel for the executive director advised that Wareham had settled and that New Point and the executive director had entered into the agreed statement of facts described above in which New Point admitted liability to the narrowed allegations in exchange for a recommendation that there should not be any sanction against New Point at a liability hearing. The hearing was then adjourned until June 3, 2022, to provide Gardener-Evans an opportunity to consider his position.

[26] On June 3, 2022, the hearing resumed. The executive director called one witness, the investigator. Gardener-Evans chose to not cross-examine the witness and did not call any evidence.

[27] On August 4, 2022, counsel for the executive director requested an oral hearing to hear liability submissions. The parties agreed that oral liability submissions would be heard on November 4, 2022. That date was later adjourned to November 29, 2022 at the request of the executive director.

[28] On November 29, 2022, oral liability submissions were heard.

B. *Factual Background*

Incorporation of New Point

[29] New Point was incorporated on March 10, 2017, as a British Columbia company. On February 15, 2019, New Point changed its name to KOPR Point Ventures Inc. (KOPR Point). On December 3, 2019, KOPR Point changed its name to Bam Bam Resources Corp.

Events of March 2017 to Late May 2018

[30] On March 21, 2017, New Point obtained an option to acquire the Columbia Sheer mining property near Cowichan Lake, British Columbia. In order to exercise the option, New Point would be required to issue 600,000 common shares to the optionor, pay $105,000 to the optionor and incur a total of $400,000 in defined exploration expenditures on the property.

[31] On November 8, 2017, New Point issued a prospectus as part of its initial public offering. In the prospectus, New Point focused the description of its business around the characteristics of the Columbia Sheer mining property and New Point's plans to develop it.

[32] According to its prospectus, New Point planned to offer 3.5 million common shares at $0.10 per share for aggregate gross proceeds of $350,000. The offering was made and was successful and the gross proceeds raised totaled $350,000. The total funds available to New Point at the closing of the offering, after deducting the estimated expenses of $80,000, the agent's fee of $35,000 and the balance of the corporate finance fee of $19,650, and including working capital available before the financing, were estimated by New Point to be $239,287.

[33] According to the prospectus, the principal purposes of the $239,287 expected to be available to New Point at the closing of the offering were the following:

(a) $101,500 [42.4%] – to pay the estimated cost of the recommended Phase 1 exploration program and budget on the Columbia Shear Property as outlined in the technical report;

(b) $91,000 [38%] – to provide funding sufficient to meet administrative costs for 12 months; and

(c) $46,787 [19.6%] – to provide general working capital to fund the issuer's ongoing operations.

[34] New Point's financial statements, for the period ended June 30, 2017, were included in the prospectus and showed that New Point had yet to incur any expenses for consulting fees or investor relations activities.

[35] New Point entered into an option agreement, dated February 22, 2018, to acquire the Mid-Corner Cobalt Property located in Newfoundland. New Point paid $5,000 and issued 500,000 common shares under that agreement.

[36] On March 2, 2018, New Point announced that Gardener-Evans was appointed CEO and director of the company. New Point also announced that Wareham was appointed CFO and director of the company.

[37] Also on March 2, 2018, New Point announced a non-brokered private placement to raise gross proceeds of up to $500,000 and the entry into a property option agreement under which the company had been granted an option to acquire a 100% interest in the Mid-Corner Cobalt Property, Newfoundland. The offering consisted of up to 3,333,334 common shares at $0.15 per share for gross proceeds of up to $500,000.

[38] On April 10, 2018, New Point announced that it had closed the private place placement consisting of 3,334,000 shares at $0.15 for gross proceeds of $500,100. According to the announcement, the proceeds were to be used for general corporate and working capital purposes. Readers were referred to the company's prospectus dated November 8, 2017 available on SEDAR for more information.

[39] On May 2, 2018, New Point issued its Management Discussion and Analysis (MD&A) for the nine-month period ended March 31, 2018. New Point stated that its principal business activities included the acquisition and exploration of mineral property assets.

[40] According to the MD&A, as at March 31, 2018, New Point had not yet determined whether its mineral property asset the Columbia Shear Property contained ore reserves that were economically recoverable. Recoverability was described as being dependent upon:

(a) the discovery of economically recoverable reserves;

(b) confirmation of the company's interest in the underlying mineral claims; and

(c) the ability of the company to obtain the necessary financing to complete the development of and the future profitable production from the property or realizing proceeds from its disposition.

[41] As the outcome of those matters could not be predicted at the time, New Point concluded that the uncertainties cast significant doubt upon its ability to continue as a going concern.

[42] According to the MD&A, New Point reported a net loss of $711,811 for the nine months ended March 31, 2018, and had no revenues from March 31, 2017 to March 31, 2018.

[43] New Point also released its condensed interim financial statements on May 2, 2018 for the nine months ended March 31, 2018, and March 31, 2017. According to the financial statements, New Point had a deficit of $762,711 as at March 31, 2018, which had been funded by the issuance of equity. The company's ability to continue its operations and to realize its assets at their carrying values was dependent upon obtaining additional financing and generating revenues sufficient to cover its operating costs. For the nine months ended March 31, 2018, New Point spent the following amounts on these expenses:

(a) $71,071 – consulting fees; and

(b) $32,250 - investor relations.

[44] In early May 2018, New Point reported a net loss of over $700,000 for the nine months ended March 31, 2018, and reported that it had no revenues for the fiscal year ending March 31, 2018. The company's ability to continue its operations and to realize its assets at their carrying values was dependent upon obtaining additional financing and generating revenues sufficient to cover its operating costs.

Majuba Hill Copper Project and financing announcements

[45] By a news release dated May 28, 2018 (May 28 News Release), New Point announced that it had entered into an Exploration Lease and Option to Purchase Agreement with Majuba Hill LLC for the Majuba Hill Copper Project (Majuba Hill agreement). The copper porphyry prospect was located 70 miles southwest of Winnemucca, Nevada and 156 miles from Reno. The owner granted New Point the exclusive option and right to acquire ownership of the property for the final purchase price of USD $4,000,000 and a series of minimum payments.

[46] The minimum payments which New Point had to pay in addition to the final purchase price were spread over 10 years as follows:

On execution of the agreement	$50,000	250,000 shares
First anniversary of effective date	$50,000	250,000 shares
Second anniversary of effective date	$75,000	250,000 shares
Third anniversary of effective date	$100,000	250,000 shares
Fourth anniversary of effective date	$125,000	none
Fifth anniversary of effective date	$125,000	none
Sixth anniversary of effective date	$125,000	none
Seventh anniversary of effective date	$125,000	none
Eight anniversary of effective date	$125,000	none
Ninth anniversary of effective date	$125,000	none
Tenth anniversary of effective date	$125,000	none
Totals	USD $1.15 million	1 million shares

At the time, one US dollar was worth about 1.30 Canadian dollars, which meant the USD $1.15 million of minimum payments was worth about $1.5 million.

[47] New Point also disclosed in the May 28 News Release that it had to pay:

(a) USD $25,706 to the owner as reimbursement of costs (on execution of the agreement);

(b) $450,000 in expenditures for the exploration and development of minerals at the Majuba Hill property as follows:

- First lease year - $100,000,
- Second lease year - $350,000; and

(c) a production royalty to the owner based on the net smelter returns from the production and sale of minerals from the property. The production royalty for precious metals was 3% and 1% for all other minerals.

[48] New Point also announced in its May 28, 2018 News Release that it intended to offer a non-brokered private placement for up to 12 million units at a price of $0.25 a unit for proceeds up to $3 million dollars. Each unit would consist of one common share and one half share purchase warrant. Each warrant would entitle the holder to acquire an additional share at a price of $0.35 for a period of one year from closing.

[49] New Point stated that the net proceeds of the financing would be used for:

(a) exploration and development at the Majuba Hill property;

(b) project acquisition and exploration; and

(c) general working capital.

[50] The May 28, 2018 News Release included a number of positive details about the Majuba Hill Copper project. Gardener-Evans, President & CEO, commented: "We are extremely pleased to add this past producing copper project to New Point's portfolio. Majuba Hill reportedly produced 2.8 million pounds of copper, and the data for Majuba Hill indicates a target for a potentially large mineralized body with encouraging porphyry copper and silver – tin type mineralization. Only a small portion of the property has been drill tested, with significant intervals that included 113m at 0.45% copper, and 47m at 1.06%. Our aim is to follow up on both the upper oxide and deeper sulphide targets at Majuba Hill with a comprehensive technical program as soon as possible."

[51] At his investigative interview, Gardener-Evans testified that New Point was in the business of acquiring and developing mining assets, specifically copper and gold. He stated that the company had enough money to operate, but not enough to exploit their asset in Nevada to its full potential, which was the reason for the private placement.

[52] When asked how much cash was needed to fully exploit the asset in Nevada, Gardener-Evans testified that they needed about USD $1.5 million and perhaps more, depending on what they found. The plan to raise that money was by private placement.

[53] According to Gardener-Evans, this first tranche of the announced private placement was placed with investors who included a number of consultants also being retained by New Point. As Gardener-Evans recalled, some of the consultants had a relationship with Wareham, some were recommended by a private capital advisory firm he was familiar with and one consultant had a pre-existing relationship with New Point.

[54] The material portions of the July 6 News Release read as follows:

> New Point Announces Closing of First Tranche of Private Placement
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> VANCOUVER—July 6, 2018—New Point Exploration Corp. (CSE: NP / OTC: NPEZF / Frankfurt: 4NP) ("New Point" or the "Company") is pleased to announce the closing of the first tranche (the "First Tranche") of the previously announced non-brokered private placement (the "Placement").
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> Under the first tranche the company has issued 6,673,000 units at a price of C$0.25 per unit (the "issue price"), for aggregate proceeds of C$1,668,250. Each unit consists of one common share and one half share purchase warrant. Each warrant will entitle the holder to acquire an additional share at a price of $0.35 for a period of one year from closing. A total of $12,000 cash and 48,000 finders warrants priced at $0.35 (one year expiry date) were paid/issued as finder fees in connection with this closing.
>
> The net proceeds of the financing will be used for exploration and development at the Majuba Hill property, project acquisition and exploration, and general working capital.
> About New Point Exploration Corp.
> New Point (CSE: NP) is engaged in the business of acquiring, exploring and developing mineral properties related to the growing battery industry. Focused on

high grade, prospective properties in North America, New Point is building a portfolio that includes lithium, cobalt and copper projects in prospective, mining-friendly jurisdictions. New Point, A Next Generation Metals Company.

On Behalf of the Board of New Point Exploration Corp.
Bryn Gardener-Evans
President & CEO

Corporate Office
1240-1140 West Pender St
Vancouver, BC
V6E 4G1

[55] Gardener-Evans testified at his investigative interview that he would have approved any private placement that occurred while he was CEO and president of New Point.

[56] On July 6, 2018, New Point wrote to the TSX Trust Company authorizing it to issue 6,673,000 New Point common shares. Gardener-Evans was one of the signatories to the letter.

[57] New Point spent or owed the following amounts on consulting fees between the financing announcement on May 28, 2018 and the finance closing announcement on July 6, 2018:

Consultant	Invoice date (2018)	Date paid (2018)	Amount paid
Palisade Global Investments Ltd.	June 28	June 28-29	$320,000.00
Hybrid Financial Ltd.	June 28	July 6	$118,650.00
Stockhouse Publishing Ltd.	June 13	July 6	$79,056.60
Step Seven Consulting Ltd.	June 28	July 10	$30,000.00
Dig Media Inc.	June 15	July 10	$60,900.00
Venture Ad Network, Inc.	June 28	July 10	$150,000.00
Transcend Capital Inc.	July 6	July 11	$199,500.00
		TOTAL	**$958,106.60**

[58] Five of the seven consultants participated in the private placement.

[59] At Gardener-Evans' investigative interview, he testified that the July 6, 2018 news release was drafted by his corporate secretary. He stated that he reviewed the news release and would have given final approval before it was issued.

[60] Gardener-Evans testified that the term "net proceeds" in the news release meant that whatever was left over from the financing, once they subtracted the cost of doing the financing, would be put to work on the project in Nevada. The cost of the financing included the $12,000 cash and 48,000 finder's warrants stated in the news release, and the fees that were paid to the consultants. When asked why an [estimated] $800,000 in fees paid to consultants was not disclosed in the news release when $12,000 in finder's

fees was disclosed, Gardener-Evans testified that "it's not required by the exchange [Canadian Securities Exchange]".

[61] On July 9, 2018, New Point issued a material change report regarding its July 6, 2018 announcement that it closed the first tranche of the previously announced non-brokered private placement. The full description of the material change repeated the first three paragraphs of the July 6 News Release.

[62] On July 17, 2018, New Point issued a news release, at the request of IIROC, about the recent increase of market activity. The news release also stated that New Point was engaged in the business of acquiring, exploring and developing mineral properties related to the growing battery industry. Focused on high grade, prospective properties in North America including the flagship Majuba Hill property, New Point was building a portfolio that included lithium, cobalt and copper projects in prospective, mining-friendly jurisdictions.

[63] On July 18, 2018, New Point announced that exploration was underway at Majuba Hill Copper Project in Nevada. Gardener-Evans was quoted in the news release: "We expect to be drilling shortly to test for the extensions of the stockwork copper mineralization intersected in MMX-24, including 113 meters at 0.45% copper, and oxide mineralization around MH-6 that assayed 47.4 meters at 1.06% copper." The announcement indicated that plans for in-fill IP geophysical lines and a more comprehensive ground magnetic survey were underway as well and that, since acquiring Majuba Hill, the company had:

(a) combined the drilling, geochemistry, and geophysics into a preliminary 3D model;

(b) engaged Wright Geophysics (James Wright) to help interpret the geophysics; and

(c) commenced analysis and interpretation of surface and underground geology using the 3D model.

During July of 2018, Gardener-Evans continued to look for potential investors. He explained during his Commission interview how he connected with a group who were both investors and consultants. He met with a representative of that group and Gardener-Evans told him he wanted to raise money for the Majuba Hill project in Nevada. Gardener-Evans was told that the group was interested in financing the company and could raise about $4 million. He was also told that they were all very experienced capital market and marketing consultants and had done transactions like this 20-odd times. Gardener-Evans received the list of names of those individuals about a week before the closing.

[64] At the closing, Gardener-Evans met a different representative of the investor/consultant group at New Point's bank. He was told at that time, that he would be given a cheque for $4 million for the financing and at the same time Gardener-Evans was to write cheques to the individual consultants. That is what took place. Gardener-Evans and Wareham signed the cheques to the consultants and provided them to the consultants' representative before New Point was given the private placement funds from those consultants.

[65] On July 25, 2018, New Point announced that it intended to proceed with a non-brokered private placement of up to 40 million units at $0.125 cents per unit to raise gross proceeds of up to $5 million. New Point stated that it may pay finder's fees or issue finder's warrants up to the amount permitted by CSE policies. The net proceeds raised from the unit offering were intended to be used for general corporate purposes, including "G&A" and exploration on New Point's projects. That news release did not mention that substantially all the monies raised from the financing would be used to pay consultants.

[66] On July 25, 2018, New Point also announced that it "Acquire[d] a Land Package Adjacent to Sokoman's High Grade Gold Project in Newfoundland." New Point agreed to purchase a 100% interest in the property by completing the following share issuances and cash payment to the Vendors: a) $30,000 cash consideration and b) the issuance of six hundred and fifty thousand (650,000) common shares of the corporation.

[67] On August 1, 2018, New Point announced it had acquired title 026311M, 500 metres east of the Moosehead Gold Project located close to the town of Grand Falls-Windsor in North-Central Newfoundland. Under the terms of the purchase agreement, New Point would make a cash payment of $60,000, at which point New Point would be beneficial owner of the prospective claims.

[68] On August 9, 2018, New Point wrote to the TSX Trust Company authorizing it to issue 37,208,000 New Point common shares. Gardener-Evans was one of the signatories to the letter.

[69] New Point spent the following amounts on consulting fees between the financing announcement on July 25, 2018 and the finance closing announcement on August 9, 2018:

Consultant	Agreement date (2018)	Invoice date (2018)	Date paid (2018)	Amount paid
Jarman Capital Corp.	June 6	July 1	July 31	$210,000
10X Capital Corp.		July 18	July 31	$300,000
Escher Invest SA	June 12		July 31	$300,000
Tavistock Capital Corp.	June 5		July 31	$420,000
Northwest Marketing & Management Inc.	June 11	July 1	July 31	$262,500
Hunton Advisory Ltd.	June 13		July 31	$300,000
Kendl Capital Limited	June 4	July 21	July 31	$400,000
Viral Stocks		July 17	July 31	$315,000
727 Capital		July 20	July 31	$300,000
Bertho Holdings Ltd.	Mar 1		July 31	$150,000
Detona Capital Corp.		July 16	July 31	$105,000
Lukor Capital	June 8		July 31	$210,000
Haight-Ashbury Media Consultants Ltd.	June 7		July 31	$210,000
			TOTAL	**$3,482,500**

[70] The substantive portions of the August 9 News Release read as follows:

> New Point Exploration Closes $4.6 Million Financing
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> VANCOUVER—August 9, 2018— New Point Exploration Corp. (CSE: NP / OTC: NPEZF / FSE: 4NP) ("New Point" or the "Company") is pleased to announce it has closed a non-brokered private placement financing ("Placement") for aggregate gross proceeds of C$4,651,000.
>
> The Company has issued 37,208,000 units ("Units") at a price of C$0.125 per Unit. Each Unit is comprised of one common share and one-half of one transferable common share purchase warrant with each whole Warrant ("Warrant") entitling the holder to purchase one additional common share of the Company at a price of C$0.13 for a period of up to six months from the date of issue, subject to accelerated expiry.
>
> In the event that the closing price of the Company's common shares is at or above $0.13 per share for five consecutive days, the Company may provide notice to the warrant holders that the expiry date of the warrants has been accelerated and that warrants not exercised within 14 days will expire.
>
> The proceeds of the Placement will be used for general corporate purposes including G&A and exploration on the Company's projects. All securities issued pursuant to the Placement will be free trading upon issuance pursuant to prospectus exemption 2.25 of NI 45-106.
>
> Further, the Company announces the appointment of Mr. James Hyland to the Board of Directors.

Mr. Hyland brings more than 25 years of experience in the public markets as a financial and marketing consultant, a corporate founder and manager of numerous early stage public and private businesses. His industry expertise includes mining, publishing, financial services, oil & gas, hospitality, technology, alternative energy and healthcare appliances. He is currently a Director of Tasca Resources Corp. (TSX.V: TAC), Resolve Ventures Inc. (TSX.V: RSV) and BLOK Technologies Inc. (CSE: BLK). Mr. Hyland has an extensive network of contacts within the financial community including brokers, fund managers, industry analysts and media, throughout North America, the United Kingdom and continental Europe. He earned a Bachelor of Commerce in Entrepreneurial Management from Royal Roads University of Victoria, BC. Canada.

The Company has accepted the resignation of Norman Wareham as Chief Financial Officer and a Director of the Company as well as Eric Saderholm as a Director of the Company. The Company wishes to thank Mr. Wareham and Mr. Saderholm for their contributions to the Company and wishes them all the best in their future endeavours.

About New Point Exploration Corp.

New Point (CSE: NP / OTC: NPEZF / FSE: 4NP) is engaged in the business of acquiring, exploring and developing mineral properties related to the growing battery industry. Focused on high grade, prospective properties in North America, New Point is building a portfolio that includes lithium, cobalt and copper projects in prospective, mining-friendly jurisdictions. New Point, A Next Generation Metals Company.

On Behalf of the Board of New Point Exploration Corp.

"Bryn Gardener-Evans"
President & CEO

Corporate Office
700-838 W Hastings Street Vancouver, BC V6C 0A6

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[71] Gardener-Evans testified at his investigative interview that this news release was drafted by his corporate secretary and that he reviewed it before it was issued.

[72] On August 9, 2018, New Point issued a material change report regarding material changes on August 8 and 9, 2018. The August 8, 2018 material change was the appointment of Hyland to the board of directors. The August 9, 2018 material change was closing the financing. The material change report attached the August 9, 2018 news release. Gardener-Evans was listed as the executive officer knowledgeable about the material change.

[73] On August 17, 2018, New Point announced that it had retained Link Media LLC to further build awareness and provide communications and market awareness services aimed at maintaining and building the profile of New Point among existing and potential shareholders. Link Media was an arm's-length service provider to the company and would be paid USD $150,000 in cash under the engagement for its services to the company. To the knowledge of New Point, Link Media did not own any of the company's securities.

[74] New Point also announced it had entered into two shares for services agreements with arm's length consultants. One agreement commenced on August 2, 2018, and was valid for a thirteen month term for 2,500,000 common shares at a deemed value of $0.07 per share. The other agreement commenced on June 29, 2018, and was valid for a six month term for 1,785,714 common shares at a deemed value of $0.07 per share. The company determined to pay the consultants in shares in order to preserve its cash for operations.

[75] New Point's consolidated financial statements, as at June 30, 2018 and 2017, issued on October 29, 2018, disclosed, in Note 11, some of the consulting fees that it paid or owed during the relevant period. During the year ended June 30, 2018, New Point stated that it entered into agreements with several parties for investor relations, and marketing and consulting services. The agreements were for periods of six months to one year and the amounts payable were non-refundable. It listed the following "significant" agreements entered into as at June 30, 2018:

(a) Escher Invest SA - $300,000;

(b) Haight-Ashbury Media Consultants Ltd. - $200,000;

(c) Hunton Advisory Ltd. - $300,000;

(d) Jarman Capital Corp. - $200,000;

(e) KOI Communications - $125,000;

(f) Lukor Capital - $200,000;

(g) Northwest Marketing & Management Inc. - $250,000;

(h) Palisade Global Investments Ltd. - $320,000; and

(i) Tavistock Capital Corp. - $400,000.

Subsequent to June 30, 2018, New Point paid $1.65 million in relation to these commitments. The issuance of the financial statements, on October 29, 2018, nearly three months after the closing of the financing, was the first time New Point disclosed to the public the nature and amount of those payments.

[76] New Point also disclosed in Note 13 to those financial statements that, subsequent to June 30, 2018, it made the following cash payments for investor relations, and marketing and consulting service agreements. The payments were made pursuant to the agreements described in Note 11 and further agreements with the following vendors that were entered into subsequent to June 30, 2018:

(a) 1153307 BC Ltd. - $490,000;

(b) 727 Capital - $300,000;

(c) Awareness Consulting Network – USD $42,000;

(d) Bertho Holdings - $150,000;

(e) 10X Capital - $300,000;

(f) Kendl Capital - $400,000;

(g) Link Media, LLC – USD $150,000;

(h) Petona Capital - $105,000; and

(i) Viral Stocks - $315,000.60.

With the exception of Link Media, the issuance of the financial statements on October 29, 2018 was the first time New Point disclosed to the public the nature and amount of those payments.

C. *Legal Background*

Section 50(1)(d)

[77] During the relevant period, section 50(1)(d) of the Act stated, in part:

> A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
> (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

[78] Section 1 of the Act defines "investor relations activities" to mean:

> any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer, but does not include
> (a) the dissemination of information provided, or records prepared, in the ordinary course of the business of the issuer
>
> (i) to promote the sale of products or services of the issuer, or

(ii) to raise public awareness of the issuer, that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

(b) activities or communications necessary to comply with the requirements of

(i) this Act or the regulations, or
(ii) the bylaws, rules or other regulatory instruments of a self regulatory body, exchange or quotation and trade reporting system,

(c) communications by a publisher of, or writer for, a newspaper, news magazine or business or financial publication, that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, if

(i) the communication is only through the newspaper, magazine or publication, and
(ii) the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer, or

(d) activities or communications that may be prescribed for the purpose of this definition

[79] In *Re Brookmount Explorations Inc.*, 2012 BCSECCOM 250, the executive director alleged that the respondents made misrepresentations contrary to section 50(1)(d) of the Act when it issued news releases that omitted material facts. The panel held, at para. 111, that the definition of "investor relations activities" includes "any… written communications, by or on behalf of an issuer…that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer." The panel expressly found that the language of that section "clearly encompassed the issuance of press releases, especially those with the promotional flavour of the press releases in that case."

[80] In *Re Nano World Projects Corporation*, 2005 BCSECCOM 441, the executive director alleged, amongst other allegations, that the respondents made statements in press releases that they knew, or ought reasonably to have known, were misrepresentations contrary to section 50(1)(d) of the Act. The panel held, at para. 68, that the respondents engaged in "investor relations activities" by issuing the press releases.

[81] The respondents in *Re Brookmount* argued that Brookmount's news releases were not captured by this definition because of the exception that investor relations activities do not include communications necessary to comply with the requirements of the Act. The panel had already found that the statements in the news releases were untrue statements of material facts, and the omissions were material facts necessary to make the untrue statements in the news releases not false. As a result, the panel had found that the news releases were misrepresentations. In light of that finding, the panel held, at para. 112, that any suggestion that the news releases were issued to comply with the Act would be ridiculous.

[82] Section 1 of the Act defines “misrepresentation” as:

> (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.

[83] In *Tietz v. Cryptobloc Technologies Corp.*, 2021 BCSC 2275, Madam Justice Wilkinson held, at para. 24, that it is clear that the definition of misrepresentation encompasses “half-truths.” An issuer cannot escape liability by only stating facts that are, strictly speaking, true, but which become misleading when considered alongside the omitted information. She cited *Kerr v. Danier Leather Inc.* (2005), 261 DLR (4th) 400, at paras. 112-113 (Ont. CA):

> [112] … By defining "an omission to state a material fact necessary to make a statement not misleading in the light of the circumstances in which it was made" as a misrepresentation, the Legislature intended to capture under the rubric of misrepresentation so-called "half-truths."
>
> [113] For example, if an issuer said in a prospectus, truthfully, that it had acquired a patent, but it omitted to say that it was engaged in litigation challenging the validity of the patent, it may well be liable for prospectus misrepresentation. Or, if an issuer had said that over the past ten years its profits had averaged $4 million annually, without also disclosing that its profits were $40 million in the first year and zero in the next nine years, this half-truth would also likely amount to a misrepresentation. In each example, the second statement was necessary to make the first statement - "in the circumstances" - not misleading.

Materiality

[84] “Material fact” is defined in section 1 of the Act as follows:

> When used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[85] The test for materiality under section 50(1)(d) is an objective market impact test. In *Re Canaco Resources Inc.*, 2013 BCSECCOM 310, the Commission held, at paras. 84 and 92:

> The reasonableness of market impact is assessed from the point of view of the reasonable investor, that is, would a reasonable investor expect that the market price or value of the securities would be affected by the fact or event?
>
> …

> The definitions of material fact and material change measure the impact on the "market price or value" of the issuer's securities. The implication is that "market price" and "value" can be affected differently by a given fact or event.

[86] In *Canaco*, at para. 100, the Commission held as follows regarding the analysis of the impact of a fact or event on the market price:

> The analysis of the impact of a fact or event on market price requires the issuer to consider whether the information will change existing investor perception to an extent sufficient to significantly affect market price. The questions the issuer needs to consider are: What is current investor perception of our business and prospects now? Would this information reasonably be expected to change that perception? If so, would the information reasonably be expected to change the perception to an extent sufficient to significantly affect market price?

[87] The court in *Tietz*, at para. 26, held:

> Materiality is a highly contextual and fact specific inquiry. Omitted information is material if its inclusion would have "significantly altered the 'total mix' of information available" to the reasonable investor in making the investment decision: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at paras. 52, 61 [*Sharbern*]; *Cappelli v. Nobilis Health Corp.*, 2019 ONSC 2266 at paras. 147-149.

[88] Under section 85 of the Act, a reporting issuer must, in accordance with the regulations:

> (a) provide prescribed periodic disclosure about its business and affairs,
> (b) provide disclosure of a material change, and
> (c) provide other prescribed disclosure.

[89] "Material change" is defined in section 1 of the Act as follows:

> (a) if used in relation to an issuer other than an investment fund,
> (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
> (ii) a decision to implement a change referred to in subparagraph (i) made by
> (A) the directors of the issuer, or
> (B) senior management of the issuer who believe that confirmation of the decision by the directors is probable…

[90] Section 7.1(1) of National Instrument 51-102, Continuous Disclosure Obligations, states:

> Subject to subsection (2), if a material change occurs in the affairs of a reporting issuer, the reporting issuer must
> (a) immediately issue and file a news release authorized by an executive officer disclosing the nature and substance of the change; and

> (b) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change.

Section 168.1(1)(b)

[91] During the relevant period, section 168.1(1)(b) of the Act stated:

> A person must not
> (b) make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

[92] The panel in *Re Donald Bergman and others*, 2021 BCSECCOM 302, at para. 54, stated:

> Under section 168.1(1)(b) the test for materiality has two parts. As stated in *Re Nuttall*, 2011 BCSECCOM 521, materiality is established based on the degree to which the information given is false or misleading in the sense of how far it departs from the truth. As noted in *Re CAAS*, 2017 BCSECCOM 296 there is another arm to the test which is focused on the significance of the information given.

[93] Section 168.1(2) provides that a person does not contravene subsection (1) if the person:

> (a) did not know, and
> (b) in the exercise of reasonable diligence, could not have known that the statement or information was false or misleading.

Section 168.2(1)

[94] Section 168.2(1) of the Act states that:

> (1) If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

[95] The panel in *Bergman* (*supra*), at para. 38, stated:

> There have been numerous decisions that have considered the meaning of the terms "authorize, permit or acquiesce." In sum, these decisions require that the respondent have the requisite knowledge of the corporate contraventions and the ability to influence the actions of the corporate entity through action or inaction.

[96] The panel in *Bergman*, at para. 39, quoted the Ontario Securities Commission case, *Re Momentas Corp.*, 2006 ONSEC 15, which considered the meaning of "authorized, permitted or acquiesced" for a director or officer's liability for the issuer's non-compliance with the Act:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, given permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.

Statutory Interpretation

[97] In *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario Securities Commission*, [1978] 2 SCR 112, at p. 114, the Supreme Court of Canada confirmed that the Act is remedial legislation and must be construed broadly.

[98] In *Re Wong*, 2016 BCSECCOM 208, when considering an issue of statutory interpretation, the panel cited, at para. 53, the following quote from *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para 219:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see 65302 British Columbia v. Canada, 1999 CanLII 639(SCC), [1999] 3 S.C.R, 804 at para 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words play a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

Standard of Proof

[99] In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada stated that there is only one civil standard of proof in Canada and that is proof on a balance of probabilities. The Court rejected the suggestion that depending on the seriousness of the allegations, the evidence must be scrutinized with greater care. The Court acknowledged that context is all important and said that a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. The Court noted, however, that those considerations do not change the standard of proof.

[100] The panel in *Re Wang*, 2020 BCSECCOM 504, at para. 55, stated:

> The Court [in *McDougall*] said there is only one legal rule and that is, in all cases, evidence must be scrutinized with care by the trial judge. The Court stated that evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

[101] The panel in *Bergman*, at para. 25, held:

> …The executive director does not have to prove each evidentiary element on a balance of probabilities. The totality of the evidence must establish that the events at issue are more likely than not to have occurred in order to satisfy the balance of probabilities test.

IV. Position of the Parties

A. *Position of the Executive Director*

[102] The executive director submitted that New Point admitted in the agreed statement of facts that:

- the July 6 News Release and the August 9 News Release contained omissions of a material fact that it reasonably ought to have known were misrepresentations contrary to section 50(1)(d) of the Act; and

- it filed two material change reports containing the same omissions which made the reports misleading contrary to section 168.1(1)(b) of the Act.

[103] The executive director submitted that Gardener-Evans, as CEO and director of New Point, authorized, permitted, or acquiesced in New Point's contraventions and, by operation of section 168.2 of the Act, also contravened sections 50(1)(d) and 168.1(1)(b) of the Act.

[104] The executive director claimed that the agreed statement of facts was sufficient to prove the allegations against New Point. He stated that New Point's business and prospects prior to entering into the Majuba Hill agreement were poor and that once New Point entered into the Majuba Hill agreement, it held out that it intended to raise up to $3 million to explore and exploit Majuba Hill. The executive director made the following submissions about the News Releases and the material change reports:

- July 6 News Release:
    - New Point was engaging in investor relations activities when it issued the July 6 News Release.
    - New Point led investors to believe that it had raised over half the funding needed for the Majuba Hill agreement by announcing in the July 6 News Release that New Point had raised $1,668,250.

- New Point did not disclose that it had already spent or owed almost $960,000 in consulting fees and that it would only retain about $710,000 of the amount raised.
- The consulting fees were a material fact that would have changed investors' perception of New Point enough to significantly affect the market price of its securities.
- By failing to disclose the amount of consulting fees, the July 6 News Release was misleading in the circumstances and was a misrepresentation.
- New Point's continuous disclosure did not alert investors to the magnitude of the consulting fees.
- The investor relations activities exception in the Act does not apply to the July 6 News Release.

- July 9 Material Change Report:
  - New Point repeated the information from the July 6 News Release in its July 9 Material Change Report.
  - New Point failed to disclose that it would only retain about 43% of the $1,688,250 raised.
  - This information misled investors about how successful the private placement had been.

- August 9 News Release:
  - New Point was engaging in investor relations activities when it issued the August 9 News Release.
  - New Point led investors to believe that it had raised $4,651,000 or almost 90% of the of the Majuba Hill purchase price and total financial obligations.
  - This amount dwarfed what New Point raised in its initial public offering and its March 2018 private placement.
  - New Point did not disclose that it had already spent or owed almost $4 million in consulting fees and that it would retain only $678,500 of the amount raised.
  - By not disclosing the consulting fees, New Point misled investors about how successful it was, how good at fundraising it was, and how close it was to meeting its total financial obligations.
  - The undisclosed consulting fees were a material fact that would reasonably be expected to change investors' perceptions about New Point and affect the market price of its securities.
  - New Point's continuous disclosure did not alert investors to the almost $4 million spent or owed in consulting fees.
  - New Point's August 17, 2018 announcement that it had retained Link Media LLC undercut Gardener-Evan's argument that he did not disclose the consulting fees because he was not required to do so by the CSE.

- The investor relations activities exception in the Act does not apply to the August 9 News Release.

- August 9 Material Change Report:
  - New Point repeated the information from the August 9 News Release in its August 9 Material Change Report.
  - New Point failed to disclose that it would only retain about 15% of the $4,651,000 raised.
  - This information misled investors about how successful its apparent record private placement had been.

[105] The executive director stated that Gardener-Evans was aware of the consulting fees at the time of the News Releases and Material Change Reports because he participated in cheque swaps, wrote cheques to the consultants, and knew how much money New Point would retain from the private placements.

[106] The executive director submitted that Gardener-Evans was vicariously liable for New Point's contraventions of the Act under section 168.2 because he admitted to giving final approval over the News Releases and material change reports as officer and director of New Point.

B. *Position of Gardener-Evans*

[107] Gardener-Evans delivered written submissions and made oral submissions at the hearing.

[108] Gardener-Evans' written submissions consisted of both general arguments about how he has been treated by the Commission and specific arguments addressing key elements of the legal and factual allegations against him.

[109] In his general arguments, Gardener-Evans submits that no established rule or standard exists regarding the disclosure that must be made relating to amounts paid or owed to consultants and, accordingly, a new legal standard is going to be required. Gardener-Evans submits that he followed the letter of the law and standard business practices in all respects. He submits that the Commission is imposing new requirements on him and his former company retroactively and asks, "should I have telepathy?" Gardener-Evans suggests that the Commission is unethical in its approach and that it should have stopped the group of consultants from "taking advantage of yet another company." Gardener-Evans concludes his submissions by expanding on his arguments, suggesting that the Commission has found difficulties with its regulations and is changing them after the fact while using him as a scapegoat.

[110] Gardener-Evans' specific written submissions include the following:

(a) It is not appropriate to rely solely on the factual admissions made by New Point to support a liability finding against Gardener-Evans. Instead, each element of any breach must be proven;

(b) The consultants did not carry out any investor relations activities because the consultants were contracted for market awareness and to source opportunities for New Point, not for investor relations. The Consultants were not able to carry out their work because trading in New Point's securities was halted before the work contracted for could be started;

(c) There was no material change and New Point was not obligated to file a material change report;

(d) There is no legal obligation for an issuer who has raised funds to state the amount spent or owed to consultants and if such an obligation exists then "in every case, unless the amount is miniscule, that information will have to be disclosed;"

(e) The industry practice until now has been that amounts paid to or owed to consultants are not disclosed in news releases describing capital raised by an issuer;

(f) The actual disclosure made was accurate in that the funds raised were to be used for "general corporate purposes…and exploration on the Company's projects;" and

(g) It is not alleged that there was any impropriety with respect to the consulting agreements themselves, and as a result the validity of those agreements and the amounts paid is not in issue.

[111] During his oral submissions, Gardener-Evans emphasized some of the points he had made in writing and he argued that for a company such as New Point there would have been a need to raise significant funds over a long period of time. As a result, he submitted, the benefits of the consulting agreements New Point signed would have been significant because the consultants would likely have been effective in securing future capital for New Point.

[112] Gardener-Evans also submitted that he did not knowingly or intentionally mislead investors. He stated that he was not sure what investors would have thought had they disclosed the monies paid or owed to consultants but he believed that, for a small, venture mining company like New Point, the pool of potential investors would have consisted of speculators who were looking to make short term trading gains and who would not have been looking to New Point's long term prospects for profit.

[113] Gardener-Evans did not submit any evidence in support of his submissions.

V. Analysis and Conclusions

[114] We have no reason to reject the admissions of fact or liability made by New Point in the agreed statement of facts between it and the executive director. New Point was represented by experienced counsel. The evidence before us including the testimony of the investigator and the documents entered as evidence support those admissions. Recent

Commission cases *Re FS Financial Strategies*, 2020 BCSECCOM 121, at paragraph 67 and *Bergman*, at paragraph 51, establish that formal admissions made in an agreed statement of facts can be relied upon to support liability findings. We see no reason to do otherwise in this case.

[115] Gardener-Evans argues that we cannot rely on the facts agreed by New Point as proof of the infractions to support liability against Gardener-Evans. We agree. In reaching all of our conclusions we have relied on the other evidence which was introduced into the record.

[116] Our analysis, including our findings and conclusions, will address the narrower allegations admitted by New Point in the agreed statement of facts as opposed to those in the Notice of Hearing. Accordingly, we will determine whether New Point:

(a) made statements in the July 6 News Release and the August 9, 2018 News Release that contained omissions of material facts that it *ought reasonably to have known were misrepresentations;* and

(b) made statements in the two material change reports that *omitted facts necessary to make those statements not misleading.*

This means that we will not be making determinations as to whether New Point *knew* about misrepresentations in the news releases or whether statements in the material change reports were *false*.

[117] Although Gardener-Evans was not a party to the agreed statement of facts, there is no prejudice to him in proceeding in this manner.

A. *Liability Relating to the News Releases*

[118] Section 50(1)(d), as it read at the relevant time and applying the narrowed allegations, precluded a person who is engaging in investor relations activities from making a statement that the person ought reasonably to know is a misrepresentation.

[119] A statement meets the definition of a misrepresentation if the statement fails to state a material fact that is necessary to prevent the statement from being false or misleading in the circumstances in which it was made. A material fact, when used in relation to securities issued or proposed to be issued, is a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[120] It follows that in relation to the July 6 News Release and the August 9 News Release the executive director must prove that:

(a) In issuing the News Releases, New Point was engaging in investor relations activities;

(b) New Point's failure to include in the July 6 News Release the fact that it would only retain less than 43% of the amount raised in the private placement, because it had already spent or then owed most of the amount raised on consulting fees, made the statement in the July 6 News Release false or misleading;

(c) New Point's failure to include in the August 9 News Release the fact that New Point would only retain less than 15% of the amount raised in the private placement because it had already spent most of the $3.483 million of the funds on consulting fees and owed $490,00 of the funds in additional consulting fees, made the statement in the August 9 News Release false or misleading;

(d) New Point ought to have known that the above-noted omissions made the statements in the News Releases false or misleading; and

(e) The omitted facts were material.

Was New Point Engaging in Investor Relations Activities?

[121] The issue of whether New Point's action in issuing the News Releases amounted to investor relations activities raises two important sub-issues.

[122] The first is how the phrase "investor relations activities" is defined in the Act and has been interpreted by prior panels.

[123] The definition in the Act includes a general definition and several exclusions. The general definition references "any activities or oral or written communications, by or on behalf of an issuer…that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer". It may well happen that issuers publish news releases which do not promote the company in some manner, but even relatively neutral and factual news releases tend to describe the underlying business of the issuer in a manner which is calculated to attract investor attention in a positive way. Since the definition connects the concepts of a reasonable expectation that a communication could be expected to promote the purchase or sale of securities with the modifier "any…communications," we conclude that the general definition has a broad reach.

[124] As is noted above, the panel in *Re Brookmount* found that the action of a public company in issuing a news release amounts to engaging in investor relations activities. The panel in that decision considered the promotional tone of the news release in reaching its conclusion. The panel in *Re Nano* reached a similar conclusion. The panel in that proceeding concluded that the issuance of a news release describing the issuer's business met the general definition of engaging in investor relations activities.

[125] We agree with the approaches and interpretations adopted by the panels in *Re Brookmount* and *Re Nano*.

[126] The second important sub-issue of whether New Point's action in issuing the News Releases amounted to investor relations activities is the question of how to interpret the portion of the definition of investor relation activities which excludes "activities or communications necessary to comply with the requirements of… this Act or its regulations, or… (an) exchange." The executive director acknowledges there is an argument that, as of July 9, 2018, New Point was obligated to announce its private placement and we are proceeding on the assumption that such an obligation existed.

[127] The wording of the definition of investor relations activities in the Act creates some ambiguity. There are two ways to interpret this exclusion, a broad interpretation and a narrow interpretation.

[128] The broad interpretation is that if there is a legal obligation on an issuer to issue a news release then the entire news release would be excluded from the definition of investor relations activities with the result that no liability could exist for any false or misleading statement contained in that news release. Under the broad interpretation, once it is found that an issuer had a legal obligation to announce something, the issuer could add extraneous and false statements to the announcement without any risk of liability. Such a broad interpretation of the exclusion would have the perverse effect of shielding companies from liability under section 50(1)(d) for almost all misrepresentations contained in news releases required to be disseminated for compliance reasons including those made to satisfy continuous disclosure obligations and such other regulatory requirements including timely disclosure obligations arising when material new information becomes available. In contrast, discretionary news releases tend to be published by issuers for less important facts. Since less important facts might not be material under the Act and clearly material facts, which must be disclosed, will be excluded from the definition of investor relations activities by the broader interpretation, a finding of liability under section 50(1)(d) would be very rare under such interpretation. The apparently intended prohibition against material misrepresentations would be largely meaningless.

[129] The narrow interpretation of this exclusion is that if a company is required to make a communication, only the parts of the communication which are mandatory are excluded from the definition of investor relations activities. This interpretation is consistent with the plain meaning of the words used in the definition, which excludes communications "necessary to comply with … requirements". Additional facts added to a news release are inherently not communicated out of any legal compulsion.

[130] Under this narrow interpretation, companies are afforded the benefit of the exclusion with respect to elements of a communication which an issuer is required to disclose for compliance reasons, but other elements of the communication in the form of included facts or excluded facts, are not excluded from the definition of investor relations activities.

[131] As an example of how the narrow interpretation of the exclusion would apply, if an issuer completes a private placement and must disclose the issuance of shares, the exclusion would apply only to those details of the share issuance which were disclosed by compulsion of law. Any other communication added to the disclosure, including any which was false or misleading or which omitted facts necessary to avoid making the communication misleading, would not be within the scope of the exclusion.

[132] In the recent decision from the British Columbia Court of Appeal, *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101, the Court held at para. 42:

> It is a well-established principle of statutory interpretation that the Legislature does not intend absurd consequences. An interpretation may be considered absurd if it leads to ridiculous or frivolous consequences; if it is unreasonable, inequitable, illogical or incoherent; or if it is incompatible with other statutory provisions or statutory objectives [citations removed].

[133] We agree with the executive director that the proper approach to interpretation must, to extract succinctly from the above quote from the Supreme Court of Canada's decision in *Canada Trustco Mortgage Co. v. Canada*, "be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the act as a whole." We believe that the narrow interpretation is the correct result which follows from that approach. We also conclude that the broad interpretation of the exclusion results in an absurdity that contradicts the purpose of the Act and cannot have been intended by the Legislature. We also find that the narrow interpretation is reasonable in light of the plain wording of the definition when read in the context of the whole of the Act.

[134] We note that our conclusion regarding this interpretation of the relevant exclusion from the definition of investor relations activities is consistent with the conclusion reached by the panel in *Re Brookmount* as referenced above. The reasoning of the panel in *Re Brookmount* was concise and the panel dismissed the broad interpretation as ridiculous. We have been more detailed in our analysis, but our conclusion is the same.

[135] To summarize our conclusions regarding what the executive director must prove in order to establish that New Point was engaging in investor relations activities, it must be shown that the News Releases described New Point's business in terms which could reasonably be expected to promote the purchase or sale of securities of New Point. Further, any communications contained within the News Releases which New Point was mandated to release for compliance reasons, particularly the fact of the private placement, would be excluded from the definition of investor relations activity.

[136] We begin our application of the above analysis by returning to the content of the July 6 News Release. The first paragraph of the July 6 News Release expresses New Point's pleasure about the closing of the first tranche of the private placement and expressly connected the financing back to the previous announcement which had been contained in the May 28 News Release. That May 28 News Release was both descriptive, in providing details about the Majuba Hill Copper Project, and promotional, in describing the potential

benefits of the project for investors. In context, the July 6 News Release begins as a promotional document.

[137] The second paragraph of that document discloses the details of the securities issued and the proceeds raised. We treat that portion of the July 6 News Release as excluded from investor relations activities because it was probable that New Point had to disclose that particular information within the news release.

[138] The third paragraph of the July 6 News Release again refers back to the Majuba Hill property and says "the net proceeds of the financing will be used for the exploration and development" of the project, as well as project acquisition and exploration and general working capital. In context, this is again, to some extent, promotional.

[139] The final operative paragraph of the news release is included under the heading "About New Point Exploration Corp." The paragraph describes the business of New Point by connection to the growing battery industry and New Point's focus on its growing portfolio "that includes lithium, cobalt and copper projects in prospective, mining friendly jurisdictions." This paragraph is a combination of pure background and promotional content.

[140] We find that the July 6 News Release was promotional and, based on the analysis above, meets the general definition of engaging in promotional activities. This includes the language in the July 6 News Release about New Point's intended use of the proceeds of the financing.

[141] Turning to the August 9 News Release, the first and second paragraphs of that document are similar in format and content to the July 6 News Release, although obviously the amounts of gross proceeds raised and securities issued differ. The description of the business of New Point is also essentially unchanged from what was contained in the July 6 News Release.

[142] The description of the use of proceeds in the August 9 News Release was different from what was contained in the July 6 News Release in that the August 9 News Release says proceeds will be used for "general corporate purposes including G&A and exploration on the companies projects." The August 9 News Release also provides details regarding the exercise dates of the relevant units. It announces the resignation of Wareham as Chief Financial Officer and the appointment of a new board member whose background is described in highly positive terms relative to the needs of New Point.

[143] We find that the August 9 News Release was promotional. It meets the general definition of engaging in investor relations activities, including in its description of New Point's intended use of proceeds. Our reasoning regarding the July 6 News Release applies as well to the August 9 News Release.

Were the News Releases Misleading?

[144] The executive director must prove that the News Releases were misleading because certain information regarding New Point's intended use of proceeds was omitted from it.

[145] The executive director is not suggesting that it was improper for New Point to hire consultants. There is no suggestion that the specific consulting contracts which New Point chose to enter into were improper. There is no suggestion that New Point was required to itemize and quantify every type of expense it intended to incur in order to prevent statements in the July 6 News Release from being "misleading in the circumstances in which they were made."

[146] The position which the executive director is advancing is that, in light of the circumstances which existed at the time of each of the two News Releases, New Point's disclosure of the intended use of the funds raised was misleading because it was not accompanied by a qualification that a significant proportion of the funds had already been spent on consulting fees, that a significant amount was owed to pay additional consulting fees and that, as a result, those funds would not be available to New Point to spend on other corporate purposes including those related to its resource exploration and exploitation activities referenced consistently in prior press releases.

[147] The premise of the executive director's argument is that investors, whether existing New Point shareholders or potential shareholders, held certain expectations, consistent with prior investor relations activities of New Point, about how New Point would allocate funds if New Point raised new funds through private placements. In order to prove its allegation, the executive director needed to lead sufficient evidence to establish on a balance of probabilities that investors and potential investors in New Point would be significantly surprised to learn that funds from the private placements were being expended by New Point on consultants in the manner and to the magnitude which was occurring. The expectations of investors can be inferred from the circumstances which existed at the time.

[148] There is no fixed list of circumstances which will always be relevant to an analysis of the expectations of investors. The inquiry into expectations must be highly contextual, and in that regard we agree with and adopt the analysis from both *Canaco* and *Tietz*, which are quoted above.

[149] Some factors which will often be significant in an examination of the "circumstances" include the prior disclosures of information made by the issuer regarding its objectives and spending priorities, as well as the "track record" of the issuer regarding how often it retained consultants and how it spent funds. Information about such topics would be communicated to investors by an issuer most prominently in news releases, material change reports and publicly released financial statements and related discussion and analysis.

[150] The misleading nature of a communication by an issuer would be established primarily by a review of the nature and degree of divergence between what should fairly be characterized as the pre-existing expectation of investors and the reality which was allegedly kept from investors.

[151] Having considered all of the evidence in this proceeding, with an emphasis on the summary of the factual background which is set out above, we have reached the conclusion that, by July and continuing into August of 2018, New Point had created a strong expectation in the market that, if New Point raised a material amount of new capital, the majority of the funds would be allocated by management to the Majuba Hill Copper Project and to a lesser extent to other projects. The key factors which lead us to that conclusion are the following:

(a) Virtually all of New Point's disclosure to the market, from the date of creation of New Point to and through the summer of 2018, was focused on the development projects which New Point had acquired options on and the work New Point would have to do, and pay for, in order to create value from those options.

(b) The May 28 News Release placed great emphasis on the Majuba Hill Copper Project. That news release described that project in significant detail and in highly promotional terms. The May 28 News Release laid out schedules showing a need for New Point to promptly begin spending significant funds on acquisition costs, leasing costs and development costs.

(c) Perhaps most significantly, the May 28 News Release included an announcement of a private placement, the first tranche of which was described in the July 6 News Release. Any reasonable reader of the News Release would expect that New Point was specifically raising funds for the Majuba Hill Copper Project. In addition, although the August 9 News Release related to a different financing, New Point had not disclosed anything in the interim which would have caused a reasonable reader of such News Release to expect anything had changed and that New Point was specifically raising funds for the Majuba Hill Copper Project. In fact, New Point had issued a news release on July 18, 2018 announcing that exploration was in progress at Majuba Hill, presumably using funds raised in the financing which closed July 6, 2018.

(d) New Point's July 25, 2018 announcement that it had obtained a new option to acquire a land package in Newfoundland was entirely consistent with its focus on resource exploration and development activities described in earlier releases.

(e) The prior financial statements of New Point created a reasonable expectation, based on expenditure levels disclosed in such statements, that New Point's burn rate on general and administrative expenses had been less than $100,000 per month. Those same financial statements also disclosed that New Point had not allocated more than 15% of its expenditures on any combination of investor relations or consultants.

(f) The News Releases described the intended use of funds as "exploration and development at the Majuba Hill Property, project acquisition and exploration and exploration, and general working capital" (July 6 News Release) and "for general corporate purposes including G&A and exploration on the Company's projects" (August 9 News Release). Those News Releases would reinforce the existing expectation about New Point's expected use of funds, which we have described, and would certainly not signal any change in the intention of New Point regarding how capital raised would be spent.

Gardener-Evans submitted that the use of funds by New Point on consultants was appropriately and accurately disclosed by the words "working capital" or "general corporate purposes." Gardener-Evans asks what the threshold is at which an issuer is required to specifically list consultants payments? We find the use of rhetorical questions unhelpful. Perhaps it would not have been unreasonable to expect that expenditures on investor relations and consultants might increase as the scale of New Point's operations grew. That is not the issue that is before us in this matter. Rather, we emphasize that continuous disclosure obligations of an issuer require sufficient ongoing transparency for investors to be in a position, based on such disclosure, to make informed decisions.

[152] We accept that any normal course expenditures by New Point which were generally consistent with what New Point had disclosed to the market through various prior disclosures, would fairly have been captured by New Point's language in the News Releases that said it would use some of the private placement proceeds for "general corporate purposes" or "G&A". As noted above, reasonable increases in any particular category of expenditure could be expected in certain circumstances and therefore failure to refer to such increases in disclosures would not be considered misleading. An omission becomes misleading when, inconsistent with investor expectations, there is a marked and undisclosed significant divergence in the use of proceeds by an issuer from that which was previously disclosed. This is particularly so when said issuer has been consistent in the focus and content of prior disclosure. Such is the case here with New Point.

[153] The executive director alleges that he has proven a sufficient divergence between New Point's expected use of funds and New Point's actual use of funds through the evidence which we have summarized above showing that, in the July 6 News Release, New Point indicated it had obtained aggregate net proceeds of $1,668,250 when it had already committed $958,106 (57%) of such net proceeds to the payment of consultants. That commitment was more than three and a half times what New Point had disclosed in prior financial statements as consultants' expenses. New Point had established the prior practice of including investor relations in its consulting expenses for financial statement disclosure purposes. Moreover, the dollar amount committed to be spent on consultants from the net proceeds exceeded New Point's normal monthly expenditures on all combined categories of overhead by almost ten times.

[154] This panel finds that it was misleading for New Point to announce that it had raised $958,106 without also disclosing in the same news release that the majority of the funds raised was not being directed toward New Point's prior disclosed commitments to exploit the Majuba Hill Copper Project or other resource projects in which New Point had an interest. It matters not that such payments were made to consultants. The identified divergence is the issue here.

[155] Our conclusions with respect to the July 6 News Release apply to the August 9 News Release, as well. The August 9 News Release states that New Point raised aggregate proceeds of $4,651,000 from the private placement but did not disclose that $3,973,000 of those funds had been committed to consultants. Only about 15% of the aggregate proceeds remained available for the corporate purposes investors would have reasonably expected to be the main use of the net proceeds from this financing. This panel finds that the omission in the August 9 News Release of that additional information was misleading.

Ought New Point Have Known the Statements Were Misleading?

[156] Turning to the element of the degree of knowledge required to establish a breach of section 50(1)(d) of the Act, the executive director must establish that New Point ought to have known that the omission in question was a misrepresentation. In this context, conclusions about the intentions of respondents can be established by inference drawn from the evidence. It is fair to say, again in the context of this type of proceeding, that the types of evidence that establish the making of a misrepresentation will also tend to establish that the respondent ought to have known that a misrepresentation was being made. If a respondent was aware of all of the information which established that the market had certain expectations about the respondent's intended use of funds and, if that respondent chose not to disclose that the real intention was significantly different, that is sufficient to prove the requisite level of knowledge. We find that New Point not only had the requisite knowledge, New Point both created the market's expectations (through New Point's public disclosures and financial statements) and made a conscious choice not to provide the additional information which would have prevented the News Releases from being misleading.

Were the Omissions Material?

[157] The final essential element which the executive director must prove in order to establish a breach of section 50(1)(d) of the Act is the requirement of materiality. When used in relation to securities issued or proposed to be issued, a circumstance which applies here, materiality is defined by reference to whether the fact in question "would reasonably be expected to have a significant effect on the market price or value of the securities."

[158] It is important to note that the concept of reasonable expectations is an objective concept. It is well established by cases such as *Canaco* and *Tietz* that the appropriate test to apply is the market impact test. The need for an objective test is both suggested by the use of the "reasonably be expected" language in the Act and by the policy outcome which those words were designed to achieve. The prohibition contained in section 50(1)(d) is designed to regulate the behavior of issuers and others at the moment certain

communications are being published to investor. The required element of materiality is an important filter, but is of limited utility if it can only be assessed after the fact by reference to whether there was an actual impact on the market. The purposes of the Act, of the section and of the specific words used are better realized if the analysis proceeds, as suggested in *Canaco*, from the point of view of a reasonable investor.

[159] Gardener-Evans argued that the investors in New Point were speculative investors who would not have considered it material if New Point had obtained funds to advance development of New Point's projects. Gardener-Evans suggested that investors might have been more impressed if they had known about the intended work of the consultants to raise awareness about the company and therefore the potential that New Point would be more successful in future funding rounds. Even if we were to accept that as true, Gardener-Evans himself points to the materiality of that information which was omitted when he says that is information to which speculative investors would have reacted.

[160] In any event, Gardener-Evans introduced no evidence in support of his submission. His hypothesis that the use of funds on consultants might have been seen by New Point's investors as equally valuable as the use we have found those investors expected, may not be accurate if New Point's disclosure also included Gardener-Evans' description of his concern about being compelled to exchange cheques in a bank branch to retain consultants about which New Point knew almost nothing. The argument is at best speculation and, in any event, such disclosure was not made and investors were not given the opportunity to make such determination.

[161] The market impact test is well established and it supports the public interest because it focuses attention on what should be reasonably expected in the context which existed. The test requires an analysis of what result a respondent should reasonably have expected when the respondent published a misrepresentation into the market. The test avoids making the outcome of the analysis of materiality dependent on what actual impact might be measurable in a market after one specific event (the making of a misrepresentation) when there might have been a number of unrelated factors influencing the market at the same time.

[162] This panel finds that the misrepresentations contained in the News Releases were material. We consider it obvious that reasonable investors who were aware of New Point would have seen New Point as an issuer which believed it had obtained rights to promising mineral properties and needed to advance exploration and development on those properties, and to cover ongoing acquisition expenses, in order to succeed as a business.

[163] Any reasonable investor would have been aware that venture companies such as New Point had ongoing overhead costs and would need to devote funds to operational uses. Any reasonable investor would have been aware that issuers sometimes retain consultants. But we conclude that the degree of divergence between the actual and expected use of funds which we have described above would have been material as that word is used in section 50(1)(d) of the Act.

[164] We can find a breach of section 50(1)(d) of the Act in relation to the News Releases only if the executive director proves all of the elements identified above. We conclude that the executive director has proven all of the elements. New Point did breach that section of the Act as alleged in the Notice of Hearing.

B. *Liability Relating to the Material Change Reports*

[165] Section 168.1(1)(b), as it read at the relevant time and applying the narrowed allegations, prohibited any person from making misleading statements in a record required to be filed under the Act. In order to establish a breach of the section in relation to the material change reports which attached the News Releases, it is necessary that the executive director prove all of the following elements:

(a) the material change reports were required to be filed, delivered or sent under the Act;

(b) the News Releases were "in" the material change reports;

(c) the omitted information about New Point's actual use of funds was at the time, and in light of the circumstances, necessary in order to make the statements in the News Releases not misleading; and

(d) the omission was material.

Were the Material Change Reports required to be filed under the Act?

[166] For a small venture issuer such as New Point the issuance of 6,673,000 units for proceeds of $1,688,250 in July of 2018 and the issuance of 37,208,000 units for proceeds of $4,651,000 in August of 2018 were both material changes to the capital structure of the company. The Act therefore required New Point to file material change reports in order to disclose the change in capital of New Point.

Were the News Releases "in" the Material Change Reports?

[167] It was not mandatory for New Point to attach the News Releases to the material change reports. New Point chose to attach them. The result was that the July 6 News Release and the August 9 News Release were "in" the corresponding July and August material change reports.

Was the Omitted Information Necessary In Order to Avoid being Misleading?

[168] Our analysis here is the same as it was regarding the corresponding issue relating to section 50(1)(d) of the Act. It was necessary that New Point include within the material change reports information about New Point's actually intended use of funds, and this panel finds that the omission of that information made the material changes misleading.

Was the Omission Material?

[169] Again, our analysis here is the same as it was regarding the materiality issue relating to section 50(1)(d) of the Act. The omitted information was material and the misleading statements of New Point were material.

[170] We find that all of the elements of section 168.1(1)(b) of the Act have been proven. New Point contravened that section of the Act, as alleged.

C. *Gardener-Evans' Personal Liability*

[171] Liability under section 168.2 of the Act is established where:

(a) a corporate respondent has contravened the Act, the regulations, or failed to comply with a decision; and

(b) an individual who is an employee, officer, director or agent of the corporate respondent "authorizes, permits or acquiesces" in the contravention.

[172] At all relevant times, Gardener-Evans was New Point's decision-maker. He was CEO, president, and a director. In his investigative interview, he admitted that he:

- reviewed the News Releases and gave them final approval;
- was aware that the Consulting Fees were undisclosed;
- participated in cheque swaps with the consultants;
- was a signatory to the Form 9s relating to the private placements referenced in the News Releases; and
- was listed as the executive officer knowledgeable about the material change in the August 9, 2018, material change report.

[173] There was a suggestion that Wareham directed some elements of New Point's conduct, particularly in relation to connecting with the consultants who were a part of the private placement announced in the July 6 News Release. He was also indicated as the person knowledgeable about the change in the July 6 material change report. However, all of the other evidence consistently identifies Gardener-Evans as the individual at New Point who made all of its relevant decisions, including regarding what should be disclosed in the News Releases. We conclude that Gardener-Evans authorized, permitted and acquiesced in New Point's breaches. We find that, under section 168.2 of the Act, Gardener-Evans breached the same provisions as New Point.

D. *General Comments in Response to Submissions of Gardener-Evans*

[174] We have addressed the most relevant of the submissions made by Gardener-Evans in the course of our analysis above. He made other submissions which deserve some analysis.

[175] Gardener-Evans argues that this panel can only find a breach of the Act by developing a new rule regarding the duty of issuers who are announcing a financing to disclose the extent to which the issuer plans to use some of the funds to pay consultants. This argument mischaracterizes the nature of the allegations. There is no suggestion that our decision will create a rule that disclosures in relation to financings must specifically list amounts spent on consultants. There has always been an obligation on issuers who are describing how proceeds from a financing will be used to avoid a misrepresentation by omission.

[176] Another of Gardener-Evans' submissions is that there was, at the time of the News Releases, an industry practice to the effect that issuers who are disclosing a new funding did not disclose how much was or would be spent on consultants. That submission was not supported by any evidence. If Gardener-Evans had supported that submission with evidence, we would have scrutinized it in order to assess whether there was such a practice. In addition, we would have evaluated whether an industry practice has any relevance at all in circumstances where the practice was to mislead investors and breach section 50(1(d) of the Act. Given the lack of evidence supporting that submission, we do not need to embark on that analysis.

[177] Gardener-Evans also submitted that the consultants likely would have eventually provided value to New Point, but they ceased their activities upon the halting of trading in New Point's shares. Implicitly, this submission is a criticism of regulators for taking action and halting trading. We do not need to explore the submission in any significant detail because it is not alleged in this proceeding that it was improper for New Point to enter into the consulting agreements in question. We will simply note that this argument that regulatory action came too soon and prevented New Point from gaining the value of the consulting arrangements, conflicts with Gardener-Evan's argument to the effect that the Commission should have acted more quickly to prevent the consultants from "taking advantage of another company."

VI. Summary of Conclusions

[178] In conclusion, we find that New Point, known at the time of the hearing as Bam Bam:

(a) made statements that it ought to have known omitted material facts while engaging in investor relations activities to promote its securities, contrary to section 50(1)(d) of the Act; and

(b) made materially misleading statements in its July 6, 2018 and August 9, 2018 material change reports by including the misrepresentations from the News Releases in those material change reports, contrary to section 168.1(1)(b) of the Act.

[179] Further, we find that Gardener-Evans authorized, permitted or acquiesced in New Point's contraventions of section 50(1)(d) and section 168.1(1)(b) of the Act, and therefore, by operation of section 168.2 of the Act, also contravened those sections.

VII. Schedule of submissions regarding sanctions

[180] We direct the executive director and the respondents to make their submissions on sanction as follows:

May 5, 2023	The executive director delivers submissions to the respondents and the Commission Hearing Office.
May 19, 2023	The respondents deliver response submissions to the executive director and the Commission Hearing Office.

	Any party seeking an oral hearing of the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
May 29, 2023	The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

April 14, 2023

For the Commission

Gordon Johnson
Vice Chair

Deborah Armour, KC
Commissioner

James Kershaw
Commissioner