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

Citation: QcX Gold Corp., 2022 BCSECCOM 422 Date: 20221011

QcX Gold Corp. (formerly First Mexican Gold Corp.), James Arthur Robert Voisin and John Charles Archibald

Panel	Gordon Johnson	Vice Chair
	Judith Downes	Commissioner
	Marion Shaw	Commissioner
Submissions completed	July 13, 2022	
Decision date	October 11, 2022	

Parties

Paul Smith Jorie Les	For the Executive Director
Patricia A.A. Taylor	For QcX Gold Corp. and James Arthur Robert Voisin
William Stransky	For John Charles Archibald

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made on April 29, 2022, reported at 2022 BCSECCOM 142, are part of this decision.

[2] We found that:

a) QcX Gold Corp. (QcX), formerly First Mexican Gold Corp., contravened section 168.1(1)(b) of the Act by filing a technical report (previously defined as the Report) and representing that the information in the Report complied with National Instrument 43-101(NI 43-101) when that was materially misleading;

b) QcX contravened sections 5.1 and 8.3(1)(a) of NI 43-101 by failing to ensure that John Charles Archibald (Archibald) met the criteria to be a Qualified Person under NI 43-101 (QP) for the Report and by failing to obtain a consenting statement from the consultant who provided the resource estimate, which was a significant component of the Report;

c) QcX contravened section 85(b) of the Act on two occasions by failing to disclose further resource estimates;

d) James Arthur Robert Voisin (Voisin) contravened sections 168.1(1)(b) and 85(b) of the Act by operation of section 168.2 of the Act;

e) Voisin contravened section 57.2(2) of the Act by selling shares of QcX during two periods in which Voisin was in a special relationship with QcX and had knowledge of undisclosed material information; and

f) Archibald contravened section 168.1(1)(b) of the Act by making three statements in the Report that, at the time and in light of the circumstances in which they were made, were either false and misleading or which omitted facts that were necessary to make statements in the Report not false and misleading.

[3] Each of the executive director, QcX, Voisin and Archibald made written submissions on what sanctions are appropriate in this case.

[4] This is our decision with respect to sanctions. In this decision, since it remains the same entity, we refer to the corporate respondent as QcX even though it was formerly known as First Mexican Gold Corp. and currently has a new management team.

[5] There is no dispute that we have the jurisdiction under section 161 of the Act to impose the penalties that were sought by the executive director.

II. Position of the parties

[6] The executive director submitted it is in the public interest that we impose the following sanctions:

a) against Voisin, permanent prohibitions restricting Voisin's participation in public markets, a $225,000 administrative penalty and an order under section 161(1)(g) of the Act that Voisin pay $68,218 to the Commission representing the amount Voisin allegedly received as a result of his contravention of section 57.2(2) of the Act; and

b) against Archibald, market prohibitions for 10 years and a $100,000 administrative penalty.

[7] The executive director submitted that sanctions against QcX are not in the public interest because the breaches by QcX of the Act and NI 43-101 were directed by Voisin, who is no longer connected to QcX. Counsel for QcX and Voisin supported the position of the executive director that no sanction should be imposed against QcX. Archibald did not take a position on that issue.

[8] Voisin argued that no administrative penalty or section 161(1)(g) payment should be ordered against him and that any market prohibitions ordered should be more focused and more time-limited.

[9] Archibald also submitted that a more limited set of market prohibitions should be imposed against him and that no administrative penalty should be ordered.

[10] It was accepted by the parties that it is appropriate to assess sanctions issues by reference to the non-exhaustive list of factors identified in *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22. To a large degree the parties found it convenient to organize their submissions by reference to the *Eron* factors and we take a similar approach in our analysis below.

III. Analysis

A. Factors

[11] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[12] In *Re Eron Mortgage Corporation*, at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
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> - the seriousness of the respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

B. Application of the factors

Seriousness of the conduct

[13] The executive director argues that because accurate and timely disclosure is fundamental to the operation and integrity of capital markets, a breach of section 168.1(1)(b) of the

Act is a serious breach. The executive director references the decision of the Alberta Securities Commission in *Re Ironside*, 2007 ABASC 824, and particularly the following language at paragraph 117:

> A sound and reliable disclosure system is fundamental to the operation, integrity and strength of the capital market. High disclosure standards for public issuers foster investor confidence and thereby contribute to a fair and efficient market. Disclosure also assists the market in valuing accurately a public issuer's share price. However, the disclosure standards will provide inadequate protection if the investors are unable to trust in and rely on the integrity and honesty of those who are appointed to serve as directors or occupy senior management positions within a public issuer. The public rightly depend on directors and senior executives to comply with regulatory requirements and to be honest and truthful in the public disclosure they make. It is serious when an officer or director of a public issuer causes it to fail consistently in complying with disclosure requirements.

[14] The executive director also emphasized the decision of the Alberta Securities Commission in *Re Russell*, 2012 ABASC 249, at para. 23:

> Drafted in recognition that mineral exploration is a highly technical field in which knowledge is often imperfect, NI 43-101 was implemented with a view to elevating the quality and reliability of mining-sector disclosure to better assist the investing public in making truly informed investment decisions, thereby protecting investors, fostering the fairness and efficiency of Canadian capital markets and confidence in those markets. The NI 43-101 disclosure regime requires, among other things, that: (i) issuers' public disclosure on important topics be based on the work of professionals with relevant expertise and experience, who apply appropriate standards to their work, and who have a stake in good disclosure by having their names attached as publicly identified QPs; and (ii) particular care be taken in the use of terminology in public disclosure, so that facts are clearly articulated, and ambiguous or simply misleading language (which might, for example, indicate to a reader that something profitable has been discovered when in fact more work must be done to make that determination) is avoided.

[15] With respect to the insider trading allegation the executive director points to the decision of this Commission in *Re Greenway*, 2012 BCSECCOM 59, para. 22, where the panel said:

> Illegal insider trading is serious, even when small amounts are involved, and the conduct is not intentional or done in ignorance of the rules. Market participants expect that all those trading in a market with integrity have available to them the same material information about the securities traded in that market. When people in a special relationship with an issuer trade while in possession of material information about the issuer that has not been generally disclosed, the public's perception of the fairness of our markets is damaged.

[16] With respect to Voisin's insider trading, Voisin argues that the purpose of his conduct in selling shares at the relevant time was not to profit at the expense of QcX shareholders,

but to raise funds from his personal resources to finance the company to the benefit of all shareholders. Voisin also argues that he lost money on the trades in question because his acquisition costs were higher than his selling prices.

[17] Returning to the disclosure issues, Voisin accepts that timely and reliable disclosure is a cornerstone of the securities market. However, Voisin notes the absence of any finding that Voisin's conduct was intended to mislead the public. Voisin testified that he believed the Second Estimate and the Third Estimate were incorrect and that is why they were not disclosed. In retrospect, Voisin accepts that he should have made full disclosure, but Voisin argues that the circumstances here are distinct from cases in which a respondent repeatedly and knowingly disclosed false information in order to mislead the market.

[18] Archibald concedes that misrepresentation is serious misconduct, but Archibald emphasizes his limited role, relative to others, in a chain of events which led to the issuance of a non-complaint NI 43-101 report. Archibald notes that Voisin was aware of the warnings from the Consultant that figures in the relevant estimate were "twitchy" and were to be "used with caution" and that Voisin himself had assured the Consultant that they would not be "anywhere near to a public document." Archibald was not aware of those comments. In addition, Archibald contrasts his conduct in quickly acknowledging his limited experience with NI 43-101 resource estimates to Commission staff to the long delays of QcX and Voisin in providing updates to the market as new information became known.

[19] We agree with the executive director that any breach of section 168.1(1)(b) or 85(b) of the Act, any conduct which undermines the protections intended by NI 43-101 and any insider trading is inherently serious because any of that conduct will be expected to undermine the ability of investors to rely on information received related to investing decisions. At the same time, we agree with the respondents that some breaches are worse than others and it is important to consider all of the circumstances of each particular case.

[20] We accept that Voisin may have believed that the Second Estimate and the Third Estimate were incorrect and that his beliefs about the underlying resource base influenced his actions. However, we find that Voisin's misconduct was still intentional because his duty was not to disclose his own opinions about the scope of the resource, but to ensure that QcX disclosed the then-current estimates made by the relevant QP. In addition, Voisin's conduct in taking information which he had been warned might include "twitchy" data and in encouraging Archibald to repackage that information for a different purpose than that for which the information was received was deliberate. Finally, we note that although Voisin is correct that we did not make a finding he intended to mislead the public, this does not suggest that Voisin was exonerated of any such conclusion. An intent to mislead the public was not a necessary element of the breach on which we were asked to make a determination; accordingly, we did not make any finding on that question.

[21] There is some significant seriousness to Voisin's misconduct and that seriousness should be reflected in our decisions about what order is in the public interest.

[22] We agree that Archibald's misconduct was different in character and duration than was Voisin's. Voisin was the decision-maker for most of the misconduct which occurred and Voisin's misconduct was prolonged over a period of many months while the same cannot be said about Archibald. However, Archibald's conduct resulted in his signing a report appearing, falsely, to represent a NI 43-101-compliant resource estimate and Archibald signed all of the necessary but misleading certifications required to enable that conduct. The seriousness of Archibald's misconduct needs to be put into the larger context but, again, there is some real seriousness to his conduct which should not be minimized.

[23] To summarize, the misconduct which has been proven against both Voisin and Archibald was inherently serious and some elements of the conduct specific to this case were particularly serious. However, when comparing this misconduct to some of the other misconduct which comes before the Commission in relation to these types of breaches, this conduct was not at the highest end of seriousness.

Harm to investors

[24] The executive director's submissions in relation to this factor relate primarily to the impact which the misconduct had on the market generally. We agree that element is quite important. We have discussed it above in connection to the seriousness of the conduct.

[25] The executive director does not submit that in this particular case there is evidence of harm to individual investors which is highly specific to those investors. For example there is no evidence of any individual who lost a specific retirement fund. Such hardship is not always present and we might find, as we do here, that the harm caused is significant even in the absence of more specific losses by investors.

[26] We agree with the executive director that the losses sustained by investors as a result of insider trading can be evaluated by reference to the improper gains received by the party conducting the insider trades and that the appropriate measure of enrichment for illegal insider trading was established in *Re Torudag*, 2009 BCSECCOM 339. In that case the panel ruled at para. 21 as follows:

> In our opinion, the benefit a trader has derived from illegal insider trading is measured by the difference between the price at which the illegal trade takes place and the price of the securities after the material information has been generally disclosed. This compares the price at which the trader bought or sold to the price at which the trader could have bought or sold after general disclosure of the material information. The result is the trader's profit earned or loss avoided through the illegal trading.

[27] We address the executive director's submission about the application of the *Torudag* approach in more detail under the appropriate heading which follows. In short, it has been proven that Voisin benefited from his illegal insider trades and the scope of the benefit establishes the scope of the corresponding harm to investors.

[28] To summarize, we agree that the findings made regarding the seriousness of the conduct support a conclusion of harm to the integrity of markets.

Enrichment of the respondents

[29] Archibald says that he was not paid for his work for QcX. There is no evidence to the contrary, or that he otherwise benefited from his misconduct.

[30] Voisin says that he spent several years working for free and investing his own funds to keep QcX afloat. He argues that he did not benefit from the misconduct found against him.

[31] We adopt the Torudag approach to quantifying the benefit gained by Voisin by his illegal insider trades. Voisin made illegal insider sales of QcX shares in 130 transactions generating $162,500. If Voisin had waited until immediately after the Final Estimate was generally disclosed and then made all of his sales at the price available that week he would have realized, at best, $0.15 per share. If Voisin had spread his sales out over a period of weeks he might have realized $0.20 per share. It is appropriate to assume the Voisin would have used some reasonable care in his sales efforts, and as a result it is appropriate to assume Voisin would have realized the $0.20 price. On that approach the enrichment received by Voisin from his illegal insider trades is $36,790.

[32] We have considered Voisin's arguments regarding the cost base of the shares that he sold. That argument is inconsistent with *Torudag*. We consider the *Torudag* approach to be sound, and we emphasize that the *Torudag* approach focuses on the nature of the misconduct in question, which is the sale of shares by an insider before material information is disclosed to the public. The argument advanced by Voisin focuses on the prices paid by Voisin for his shares, an event which predates and is independent from the conduct in question.

[33] Voisin also argues that he sold his own shares to make funds available to QcX for the benefit of all shareholders. Voisin asserts that the timing of his share sales was dictated by the timing of QcX's need for funds, not Voisin's own desire to profit. With respect, that explanation is not an excuse for breach of section 57.2(2) of the Act. Voisin's obligation was to ensure that proper disclosure was made in advance of any share sales.

Aggravating factors

[34] The executive director points to the number of interrelated contraventions as an aggravating factor and expands on how the misconduct by Voisin was an active deception, not simply poor judgement. The executive director also submits that Archibald actively deceived the public. Those arguments have some force. We have considered them above in our analysis of the seriousness of the offence, and we place some weight on those factors in our assessment of what order is in the public interest.

[35] The executive director also notes that the lack of disclosure was prolonged. We agree that factor should be considered along with all other factors.

Mitigating factors

[36] Archibald notes that he has already been sanctioned for his conduct in this proceeding by the Association of Professional Geoscientists of Ontario. Archibald submits that his sanction there should be taken into account. The order granted by that professional body included terms that:

i. Mr. Archibald's registration was suspended for three months;
ii. Mr. Archibald must not perform mineral resources or mineral reserve estimations until he successfully passed a course on NI 43-101 reports approved by the Registrar;
iii. Mr. Archibald's next NI 43-101 report/submission must be peer reviewed by a peer acceptable to the Registrar; and
iv. Mr. Archibald's name be published by the Association with the summary of the decision and reasons in the matter.

[37] We agree with Archibald that penalties imposed against him by other administrative bodies should be taken into account. However, we note that our basis for imposing sanctions is the public interest in British Columbia in relation to public markets. As a result, we might have a perspective on the seriousness of Archibald's conduct which differs from what another administrative body might have had.

[38] Voisin references certain factors under this heading as factors which distinguish this case from prior decisions made by other panels of this and other commissions. That is a legitimate approach, but we prefer to, and will, take those arguments into account when we turn specifically to the applicability of certain precedents.

Past misconduct

[39] Neither respondent has a history of misconduct.

Risk to our capital markets; fitness to be a registrant or director or officer of an issuer

[40] Both Voisin and Archibald reference their age (Archibald is 75, Voisin is 65), their lack of prior misconduct and their dependence on public issuers for income as factors indicating that any prohibitions on market participation should be very limited in scope and duration.

[41] We take the submissions of Voisin and Archibald about their personal circumstances seriously. However, we find that the conclusion which is most clearly drawn from the conduct of Voisin and Archibald is that they have shown a willingness to circumvent the rules and standards which were designed to protect the investing public from misleading information. Voisin, as a director and the CEO of an issuer, and Archibald, as a professional engineer, should have stood as gatekeepers to uphold the relevant standards. Instead they did the opposite.

[42] We have considered carefully the arguments put forward by Voisin and Archibald suggesting that the orders sought by the executive director are excessive. However, the evidence clearly supports a conclusion that, to protect the public interest, Voisin and

Archibald should not presently be trusted with gatekeeper roles within public markets. Significant prohibitions are justified.

Specific and general deterrence

[43] Archibald's submission regarding these factors was well-expressed and we quote it in detail:

> 19. Specific and general deterrence are factors in determining appropriate sanctions; however, the weight given to each will vary with the circumstances in a given case. As a unanimous division of the Court of Appeal wrote in *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, leave to appeal ref'd [2014] S.C.C.A. No. 476:
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> > 154 …. [Specific and general deterrence] are legitimate considerations, but at the end of the day the sanction must be proportionate and reasonable for each appellant. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual appellant.
> >
> > …
> >
> > 156 … [A]ny further administrative penalty must still be proportionate to the offence, and fit and proper for the individual offender. An administrative penalty focused purely on general deterrence of an unidentified and amorphous sector of the public could easily become disproportionate to the circumstances of the individual involved.
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> 20. With respect to the appropriateness of a sanction, and in particular an administrative penalty, a respondent's financial circumstances warrant consideration in assessing the quantum of a monetary penalty.
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> *Re DominionGrand,* 2019 BCSECCOM 335 at para. 53

[44] We accept Archibald's evidence that he has almost no money and that he has limited opportunities to earn income.

[45] We accept Voisin's evidence that he has almost no money and that he has limited opportunities to earn income. We accept that Voisin's professional expertise is concentrated in the field of assisting early-stage resource companies. We also accept that Voisin now has limited financial resources because for several years he invested both family assets and borrowed funds to keep QcX operating.

[46] It can be very challenging for a panel to properly reflect the importance of the factor that sometimes parties who have committed serious breaches of the Act might have very limited resources available to pay a financial sanction. We are seeking to craft an appropriate sanction in order to protect the public. This suggests that significant weight should be placed on the factor of general deterrence. At the same time, there are limits on the public benefit achieved by the imposition of massive penalties which the party who committed the breach has no realistic ability to pay.

[47] We have concluded that the misconduct of both Voisin and Archibald was serious. We have concluded that significant prohibitions against their participation in public markets are justified in order to protect the public. We also conclude that some significant financial sanction is justified in order to reflect the seriousness of the misconduct and to support general deterrence.

[48] At the same time we accept the evidence provided by Voisin and Archibald that they have essentially no assets available to pay a financial sanction and that the prohibitions we are ordering will limit their abilities to earn incomes in the future. In addition we repeat our finding that although the misconduct in question is serious, it is not the most serious in comparison to some other breaches of the same provisions of securities laws.

Prior orders in similar cases

[49] We have been referred to four decisions that ordered sanctions in similar circumstances. *Re Arian Resources Corp.* and *Re Mountainstar* are decisions of this Commission. *Re Ironside* and *Re Russell* are decisions of the ASC. *Re Russell* is particularly relevant to acting as a QP without the relevant experience.

Arian Resources

[50] *Re Arian Resources Corp.,* 2022 BCSECCOM 55 is a recent decision. The panel in that matter referred to both *Re Mountainstar* and *Re Ironside* in its decision.

[51] In *Re Arian*, two directors of a mineral exploration company were sanctioned for making materially misleading statements and failing to disclose material changes with respect to the company's primary asset. The panel found that the company:

(a) breached sections 85(a) and 85(b) of the Act by failing to disclose material changes in 2015 and 2016;

(b) breached section 168.1(1)(b) of the Act on several occasions in 2014, 2015 and 2016, by delivering financial statements and MD&As which omitted material information; and

(c) breached section 168.1(1)(b) of the Act by making false and misleading statements about executive compensation in information circulars filed by in 2015 and 2017.

[52] The panel ordered broad permanent prohibitions on each director's future participation in the capital markets and a $200,000 administrative penalty for each director.

Mountainstar

[53] In *Re Mountainstar*, Johnson was the president and CEO of the mining company, a reporting issuer. The company made statements regarding its only material asset in its MD&As filed between December 2012 and December 2015.

[54] The panel found that:

(a) Mountainstar repeatedly contravened section 168.1(1)(b) of the Act by making disclosure in its required public filings concerning certain Chilean mining claims and related legal proceedings that was false or misleading in a material respect at the time and in light of the circumstances in which the disclosure was made, or omitted facts necessary to make the disclosure not false or misleading; and

(b) Johnson contravened the same provisions by the operation of section 168.2 and therefore Johnson repeatedly contravened the same provision.

[55] The false or misleading disclosure fundamentally misrepresented ownership of the mining interests that constituted Mountainstar's principal asset. The panel found that the misconduct was aggravated by the repetition of the false or misleading disclosure over a three-year period - even, in some instances, in the face of evidence establishing that the disclosure was clearly wrong.

[56] The panel was concerned that Johnson refused to accept the findings of the panel, confirming that Johnson's ongoing participation in our capital markets posed a serious risk. Johnson's disregard for the panel's findings was also relevant to their consideration of the appropriate specific deterrence required for Johnson.

[57] The panel ordered an administrative penalty against Johnson of $150,000 in addition to a permanent broad market ban.

<u>*Ironside*</u>

[58] The *Re Ironside* decision related to the conduct of two senior officers, Ironside and Ruff. Ironside was also a director of the company. The ASC panel found Ironside and Ruff contravened Alberta securities laws in two instances and acted contrary to the public interest when they prepared and disseminated materially misleading disclosure regarding the company's operations and financial position.

[59] The panel issued a permanent market ban against Ironside and ordered him to pay an administrative penalty of $180,000. In determining the appropriate sanctions, the panel considered that Ironside remained unrepentant and unwilling to accept that he had acted improperly. The panel found that this conduct led them to conclude that Ironside presented an extremely serious threat to the integrity of the Alberta capital market and public confidence in that market in general.

[60] Ruff, whom the panel considered to have played a lesser role, received a seven-year market ban and an administrative penalty of $50,000. Ruff acknowledged both the seriousness of the allegations against him and his role in the misconduct. He represented that he had no intention of participating in the capital markets in the future.

<u>*Russell*</u>

[61] In *Re Russell*, Russell was president and CEO of a mineral exploration company that had an interest in a mineral property called "Two Mile". Over a six-month period during the

"first half of 2009" the company issued eight news releases announcing results of testing and additional drilling at Two Mile. Russell approved and authorized the news releases and was identified in seven of the eight releases as the company's QP.

[62] Russell was an engineer with some operational and project management experience in the mining sector. However, he lacked "the experience relevant to the Two Mile project as it stood in the first half of 2009" – "at a very early stage of information gathering and interpretation". The panel found that Russell was not eligible to act as the company's QP in respect of the Two Mile project in the first half of 2009, and that his acting as such breached section 2.1 of NI 43-101.

[63] The panel also found that the news releases were materially misleading and Russell therefore contravened section 92(4.1) of Alberta's Securities Act. It said that Russell's misconduct was serious. It also made a distinction between the two contraventions and stated that improperly acting as a QP was the more problematic contravention. It stated at paragraph 23:

> Misleading or untrue material disclosure by a public company is undoubtedly problematic. However, we are most troubled by the second aspect of Russell's misconduct because it breached an element of Alberta, and Canadian, securities laws specifically designed to address issues of particular past concern in the mining sector of Alberta and Canadian capital markets.

[64] Russell was prohibited from acting as an officer or director for five years and ordered to pay an administrative penalty of $150,000 and costs of the investigation and hearing in the amount of $40,000.

[65] Voisin submits that of the precedents identified, *Russell* is the closest comparator. Voisin emphasizes that in Russell there was evidence of price fluctuations directly connected to the clarifying news release and Voisin argues that a lesser sanction, and a shorter market prohibition are justified in this case.

[66] Archibald argues that his degree of participation is lower than was found against respondents in the precedents described above.

[67] We note that the precedents all involved a degree of repetition of misleading disclosure which exceeded what was present here. However, in the case of Voisin, we have made a finding of insider trading which was not present in the precedents. Overall the factors present in this case, other than the issue of ability to pay, place it in the range of the precedents, approximately $150,000 to $200,000, but not near the top of the range.

[68] The executive director submits that it is also appropriate under section 161(1)(g) of the Act to order that Voisin pay to the Commission the benefit he received from selling shares of QcX contrary to section 57.2 of the Act. The two-step process that the Commission should follow in determining whether such an order is appropriate comes from *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207. In particular, the panel should determine:

a) whether a respondent, directly or indirectly, obtained amounts arising from their contraventions of the act, and then

b) if it is in the public interest to make such an order.

[69] The executive director calculated Voisin's benefit from his misconduct at somewhere between $36,790 and $68,218, depending on the price per share immediately after the Final Estimate that is used in the calculation. As outlined above, we rejected Voisin's submission that, taking into account his acquisition costs, his sales of QcX resulted in a loss. Further, we found that $36,790 is the approximate amount of the amount obtained by Voisin as a result of his contraventions of the Act.

[70] When considering the public interest, we find that making an order under section 161(1)(g) is appropriate. Voisin's conduct was deliberate and intentional. Regardless of Voisin's submissions on the purpose of selling shares into the market contrary to the Act, buying and selling securities while in a special relationship with an issuer, with knowledge of undisclosed material information, strikes at the core of the securities industry and continuous disclosure obligations. It is fundamental to fair and efficient capital markets that as director, president and CEO of the issuer, Voisin not benefit from his knowledge of undisclosed material information by selling securities into an uninformed market. We find that it is in the public interest to ensure that Voisin is not permitted to maintain the benefit of his misconduct.

IV. Decision Regarding QcX

[71] As has been noted, no sanctions are sought against QcX. We are prepared to accept the executive director's position in that regard. The group of people who faced the highest risk of harm due to the conduct of Voisin and Archibald were the shareholders of QcX. Any financial sanction imposed would potentially be paid by that same group of people. In addition, there is a new management team in place and no allegations of wrongdoing have been made against any of the new team.

[72] We make no order regarding QcX.

V. Appropriate sanctions

Administrative penalties

[73] We have discussed all of the material factors individually above. We have expressed some conclusions on how those factors interact and should be balanced against each other in this particular case. In brief, before assigning weight to the issue of ability to pay, we find that any financial sanction we order against Voisin should be in the range of $150,000 to $200,000 but not at the top of that range, and that it should be greater than that ordered against Archibald, given the latter's lower degree of fault.

[74] As we have discussed above, when we turn to the issue of ability to pay we are, to a large extent, balancing that factor against the benefit of emphasizing general deterrence. We conclude in this case that given the seriousness of the conduct and the importance of the disclosure system related to resource estimates, some emphasis must be placed on general

deterrence. As a result we consider it in the public interest to order significant administrative penalties against Voisin and Archibald, despite their limited financial prospects.

[75] We conclude that Voisin should be ordered to pay an administrative penalty of $130,000 and Archibald should be ordered to pay an administrative penalty of $75,000.

Market prohibitions

[76] We have recorded our conclusion above that at present neither Voisin or Archibald should be trusted with a gatekeeper role in public markets. Both have shown a disregard for, and lack of understanding of, the public market's need for clear, timely information which meets the standards investors assume apply when a technical report is signed by a QP.

[77] We accept that the durations of prohibitions sought by the executive director are justified regarding Archibald and Voisin. Public markets should be shielded from Voisin permanently and from Archibald for ten years.

VI. Orders

[78] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Voisin

1. under section 161(1)(d)(i) of the Act, Voisin resign any position he holds as a director or officer of an issuer or registrant;

2. Voisin is permanently prohibited:

    a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security or derivative or a specified class of securities or class of derivatives, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this Decision,

    b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision;

    c) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant;

    d) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter;

e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;

g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

3. Voisin pay to the Commission:

a) $36,790 under section 161(1)(g) of the Act; and

b) an administrative penalty of $130,000 under section 162 of the Act;

Archibald

4. under section 161(1)(d)(i) of the Act, Archibald resign any position he holds as a director or officer of an issuer or registrant;

5. Archibald is prohibited for a period of ten years:

a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security or derivative or a specified class of securities or class of derivatives, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this Decision;

b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision;

c) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant;

d) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter;

e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;

g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

6. Archibald pay to the Commission an administrative penalty of $75,000 under section 162 of the Act.

October 11, 2022

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

Marion Shaw
Commissioner