



2023 Virtual Symposium

April 18, 20, 25 & 27, 2023



2023 Symposium Planning Committee

PGO gratefully acknowledges the work of the Symposium Planning Committee in putting together this virtual learning event.

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Panel Session D

Qualified Person: Not Just a Pen for Hire

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Panel Session D Co-Chairs



Craig Waldie, P.Ge., FGC
Ontario Securities Commission



Hannah Chessell, P.Ge.
Geosyntec Consultants

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Panel Session D

Presentations and Speakers

1) *Relevant experience – a critical but poorly understood concept*
Craig Waldie, P.Geo., FGC, Senior Geologist, Ontario Securities Commission

2) *Excess Soils: Come get your fills*
Hannah Chessell, Project Hydrogeologist, **Geosyntec Consultants**

3) *Professional obligations of a Qualified Person (QP)*
Brian Abraham, KC, P.Geo., Dentons Canada LLP (Retired)

4) *Secondary Market Liability – What is it, and how can you protect yourself?*
Kimberly Burns, Partner, Dentons Canada LLP

-----**5-MINUTE BREAK**-----

4) Panel Discussion
Co-chairs and Speakers

5) *Q & A Session*

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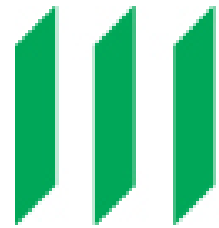


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Presentation 1

Relevant
experience – a
critical but poorly
understood
concept



Craig Waldie, P. Geo., FGC
Senior Geologist
Ontario Securities Commission

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“Relevant experience”

A critical but poorly understood concept

Craig Waldie, P.Geo., FGC
Ontario Securities Commission

April 27, 2023

Cautionary statement

Views expressed in this presentation are those of the presenter and do not bind the OSC or their staff.

Presentation is provided for general information purposes only and do not constitute legal advice. Information has been summarized and paraphrased for presentation purposes.

Responsibility for making sufficient and appropriate public disclosure and complying with applicable securities legislation remains with the company and its directors and officers.

The contents of this presentation should not be modified without the express written permission of the presenter.

What will we cover

- Qualified Person – Role and definition
- Relevant experience self-test
- CIM practice guidelines
- 5 steps you can take to self-assess your relevant experience
- Example: Work experience matrix
- Summary

Role of the Qualified Person in NI 43-101

The Qualified Person (QP) is fundamental to NI 43-101 and is required to act as a “gatekeeper” for the capital markets

- **Four key provisions under NI 43-101 where the QP acts as a “gatekeeper”**
 - All disclosure of technical information on a property material to the company must:
 - 1) Be prepared by or approved by a **QP**
 - 2) Provide the name and relationship of the **QP** to the company
 - 3) State whether the **QP** has verified the data, describe how the data was verified, and explain any limitations or failures to verify the data
 - A technical report must:
 - 4) Be prepared and signed-off by one or more **QPs**

*NI 43-101 can only function as intended if the **Qualified Person** understands their **gatekeeper role** in upholding the integrity of the **capital markets***

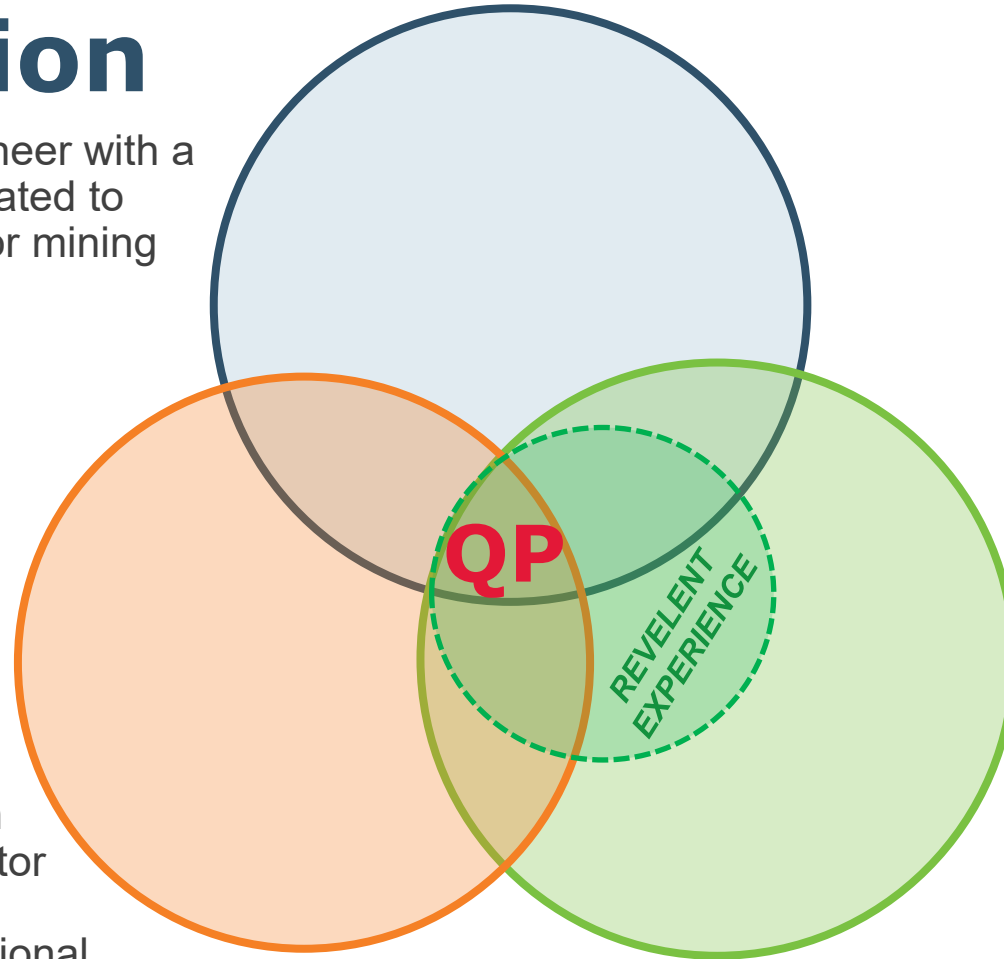
3 “E”s of the Qualified Person definition

Education

Geoscientist or engineer with a university degree related to mineral exploration or mining

Ethics

In good standing with a professional regulator recognized by law in Canada, or a professional body listed in Appendix A



Qualified Person (QP) is a term created by the capital markets for the capital markets

Experience

At least **5 years** of experience in the mineral industry that is related to their professional degree or area of practice &

has **Relevant Experience** related to the subject matter of the mineral project

Relevant experience – It's a self test



I have sufficient relevant experience



I may need to have more experience



I don't know what to do

- Determining what constitutes relevant experience can be difficult and common sense has to be exercised
- The individual should be clearly satisfied that they could face their peers and demonstrate **competence** and **relevant experience** in **two** areas:
 - Activity being undertaken, and
 - Mineral deposit type or style



www.cim.org

The individual must assess their own relevant experience

- **Activity**: *The stage of development of a mineral project is key to understanding which activities are critical and what experience is relevant to the situation*
- **Mineral deposit**: *Deposits are diverse in type, style, and commodity requiring specific relevant experience, although some transferable experience may be applicable*

CIM practice guidelines

Activity being undertaken

- **Practice guidelines**
 - Mineral exploration (2018)
 - Estimation of mineral resources and mineral reserves (2019)
 - Commodity pricing (2020)
 - Mineral processing (2022)
 - Environmental, social, & governance (2023?)



Note: Geoscientists Canada's website also provides a "Geoscience Practice Guidelines Catalogue"

Mineral deposit type or style

- **Commodity specific guidelines**
 - Coal (updating)
 - Industrial minerals (updating)
 - Laterites (2003)
 - Mineral brines (updating)
 - Placers (2003)
 - Potash (2003)
 - Rock-hosted diamonds (2008)
 - Uranium (updating)

Note: The "activity" practice guidelines apply to most metalliferous mineral deposits (i.e. base and precious metals)

What are 5 steps that a P.Geo. can take to self-assess their relevant experience?

- 1) Review relevant regulations, standards, and guidelines that apply to you**
 - Code of Ethics, professional practice standards, legal and regulatory requirements, etc.
- 2) Assess your education and training, including professional development**
 - Do you have the skills to identify with substantial confidence problems that could affect the reliability of the data?
- 3) Assess your work experience history – be truthful about yourself**
 - Prepare a work experience matrix to help quantify and support your relevant experience self-assessment
- 4) Assess your level of responsibility on past projects**
 - What was the scope and complexity of your past projects, and what was your role and level of involvement or responsibility?
- 5) Seek feedback from peers and supervisors**
 - They can help you identify any potential knowledge and experience gaps

Example: Work experience matrix related to mineral exploration

Activities related to Mineral Exploration	Time (years) actively engaged in exploration activities related to a specific mineral deposit type or style							Total
	Archean gold	Volcanogenic Massive Sulphide	Epithermal gold	Sediment hosted copper	Iron oxide copper gold	Layered intrusion nickel	Porphyry copper	
Geology & relationship to mineralization	1.9	1.6	0.5	0.4	0.2	0.1	0.1	4.7
Structural interpretation	0.2	0.1	0.1	0.0	0.1	0.1	0.0	0.4
Sampling methods & analytical techniques	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.6
Data QA/QC & database integrity	0.2	0.2	0.1	0.1	0.1	0.1	0.0	0.6
Drilling & logging	2.1	1.5	0.1	0.1	0.0	0.0	0.0	3.8
Deposit modelling concepts	0.2	0.1	0.1	0.0	0.0	0.0	0.0	0.4
Mining & metallurgical factors	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.3
Cultural & environmental factors	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.5
Documenting & report writing	0.4	0.3	0.1	0.1	0.1	0.0	0.1	0.9
Years	5.3	4.0	1.0	0.8	0.5	0.3	0.2	12.0

Modified from: "Trust me – I'm a Competent Person": A transparent approach to demonstrate competency for JORC reporting. J. Legg, 2014

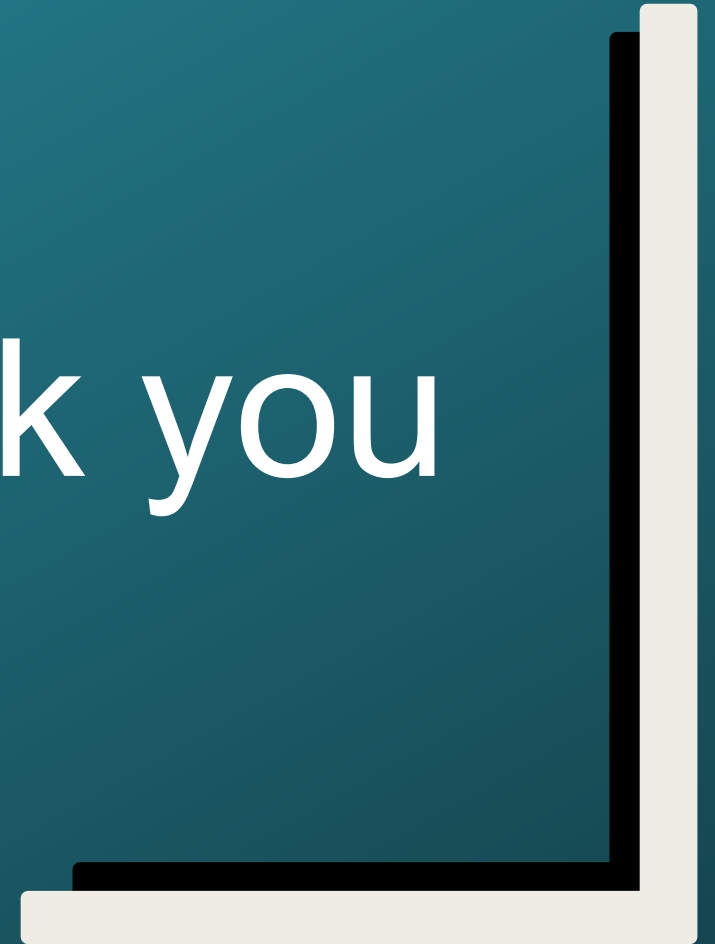
Summary

- **“Qualified Person”**
 - A term created by the capital markets for the capital markets
 - The Qualified Person acts as a “public protection bridge” between the company and the investing public to maintain confidence in the capital markets
- **Know your competency limits**
 - Follow your professional regulator’s Code of Ethics and only accept work in areas where you are competent based on your knowledge, skill, ability, and experience
- **Prepare your own work experience matrix**
 - It supports your relevant experience self-assessment rather than just saying:
“Trust me – I’m a Qualified Person”

Craig Waldie, P.Geo., FGC
Senior Geologist
Ontario Securities Commission

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Thank you



Presentation 2

Excess Soils:
Come get your
fills



Hannah Chessell, P. Geo.
Project Hydrogeologist
Geosyntec Consultants

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Excess Soils: Come Get Your Fill

Hannah Chessell, P. Geo., QP_{ESA}

April 27, 2023

O. Reg 406/19 – Excess Soil



A better framework for the management and reuse of excess soil generate from a Project – Soil is a Resource!



“Soil, or soil mixed with rock, that has been excavated as part of a project and removed from the project area for the project”



These regulations will reduce GHG emissions from transporting soil, reduce illegal dumping & decrease the amount of soil going to landfill

Projects & the Excess Soil Regulation



Typical Projects

- Soil is removed from Project Area
- Soil is moved from one Project Area to another Project Area
- Soil is imported
- Capital and non-capital projects



Planning Exempted Projects

- Soil from emergency works
- Soil from Fit State of Repair works
- “Low-risk” Sites
- And others...



Qualified Person Overview

“qualified person” means,

(a) subject to clause (b), a qualified person within the meaning of section 5 of Ontario Regulation 153/04, and

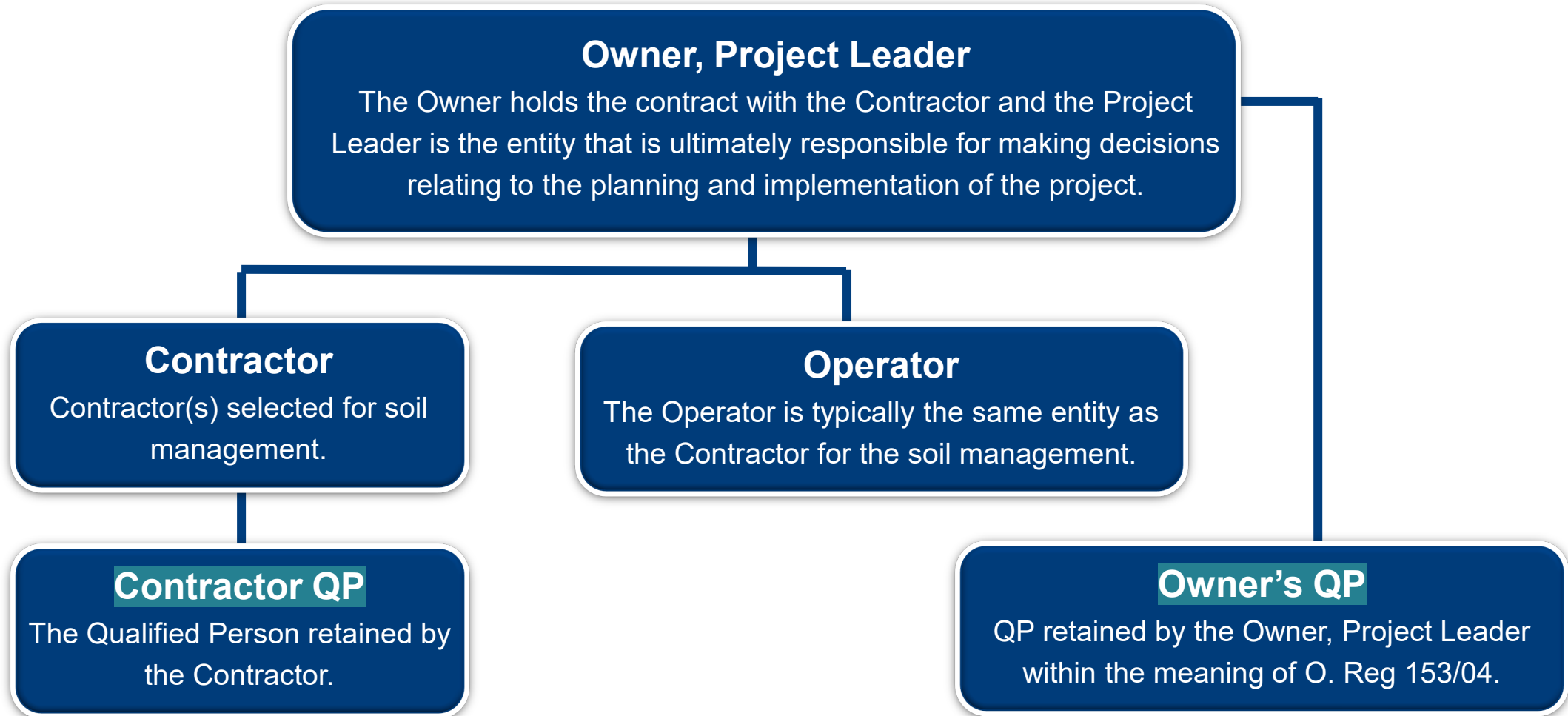
(b) for the purposes of subsections 5 (2) to (5), 6 (4), paragraph 7 of subsection 19 (4), section 20 and section 13 of Schedule 1, a qualified person within the meaning of section 5 or 6 of Ontario Regulation 153/04; (“personne compétente”)



(a) the person holds a licence, limited licence or temporary licence under the *Professional Engineers Act*; or

(b) the person holds a certificate of registration under the *Professional Geoscientists Act, 2000* and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario. O. Reg. 66/08, s. 2

Who's Who Responsibility



QP & Excess Soil

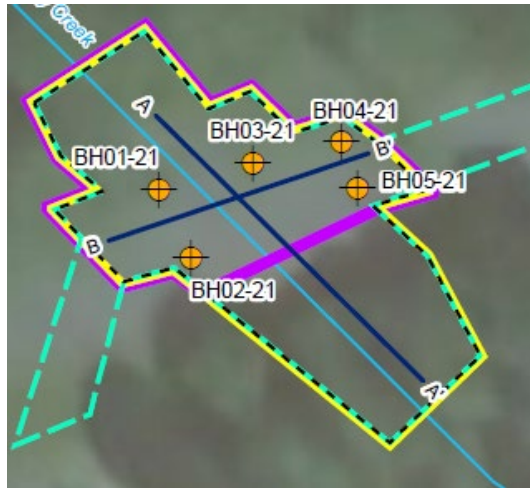
- Planning Documentation & Declarations
 - Assessment of Past Uses
 - Sampling & Analysis Plan
 - Soil Characterization Report
 - Excess Soil Destination Report
- Use of the Beneficial Reuse Assessment Tool (BRAT)
- Use of polymers for dewatering
- Develop and apply site-specific excess soil quality standards for the reuse site
- QP may prepare a fill or soil management plans (best practice)



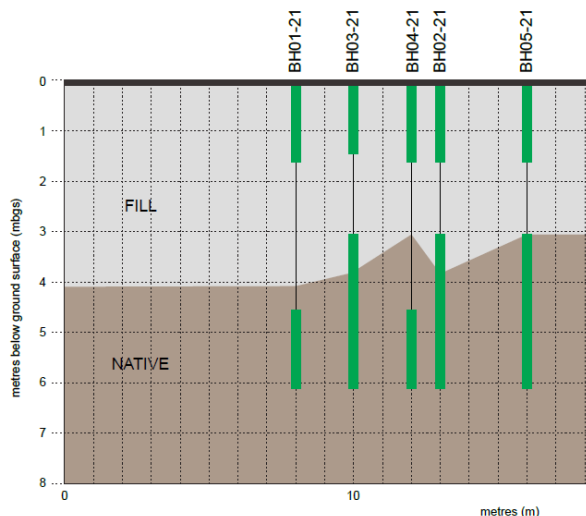
Best Practices

- When Planning Documentation is not Required, what are the best practices?
 - Property Use
 - Sampling Frequencies
 - Parameters
- Naturally Occurring Contaminants
- Management Plans

O. Reg 153/04 vs O. Reg 406/19



- PCAs & APECs → Define APECs that define the excavation in 3D space
- Ministry not clear on whether an APEC can be vertically capped
- Need to think about the footprint & volume of the excavation and define the APECs appropriately
- Considerations for final deposit location



O. Reg 153/04 vs O. Reg 406/19

Planning Documentation

- How to characterize for differing management options
- How to modify/enhance Phase II ESA to consider excess soils?
- Past Reports might not adequately characterize the excess soil
- How do you delineate and how do you assess? They have slightly different objectives

Urban Contaminants

- Urban contaminants (not just EC/SAR), no set protocols or guidance
- Shallow soil COCs aren't thought about as much. Under a road? There's asphalt or a parking lot where there are spills and it might not be a PCA but is it a concern?



Reuse Sites

- Regulation doesn't always require Reuse sites to have sampling results in order to receive soil
 - *There are many exemptions for not sampling*
- There is a risk to the Reuse site of accepting without results but nothing in the Regulation that says they must receive sampling results
- Some Reuse Sites will still want APU and at least some sampling results
- It will be up to how risk averse that Reuse site is
- Have early discussions with the reuse sites on their expectations
- Cannot expect a Reuse site to accept your soil without backup

Overall Benefits of Addressing Excess Soil



Sustainability



**Environmental
Stewardship**



Social Benefits



Governance



**Potential
Cost Savings**

Ethics, Appropriate Knowledge, Skills and Experience

Code of Ethics under the Professional Geoscientist Act of Ontario (2000) states:

“A professional geoscientist shall be guided in his or her professional conduct by the principle that professional ethics are founded upon integrity, competence and devotion to service and to the advancement of human welfare and by the conviction that his or her actions enhance the dignity and status of the profession.”

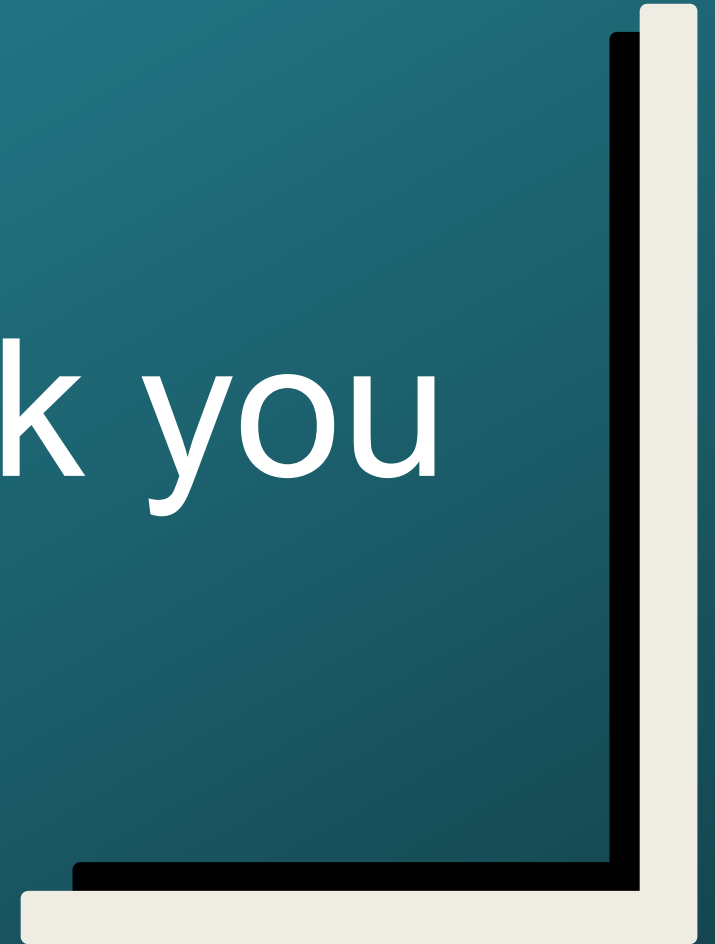
Further,

“A professional geoscientist shall undertake only work that he or she is competent to perform by virtue of knowledge and experience and shall prepare reports and express opinions on geoscientific matters only on the basis of adequate knowledge and scientific data and of honest conviction.”

As such, it is the assumption of this best practice document that Professional Geoscientists are working within their appropriate knowledge, skills, and experience. This applies to activities around Excess Soil Management and practices.

QPs have a responsibility to protect the health and safety of the public in their practice.

Thank you



Presentation 3

Professional obligations of a Qualified Person (QP)



**Brian Abraham, KC,
P.Geo.**
Dentons Canada LLP (Retired)



PROFESSIONAL GEOSCIENTISTS ONTARIO

2023 VIRTUAL SYMPOSIUM

Professional obligations of a Qualified Person (QP)

Brian Abraham, KC, P.Geo.

April 27, 2023

Professional Geoscientists Act (Ontario)

Amended 2017

- Section 3, membership.
- Section 4, applies to companies and partnerships as well as individuals.
- Section 7, offences
 - *first offence \$25,000;*
 - *second offence and subsequent ones \$50,000.*
- Section 13, council can refuse registration for
 - *convictions;*
 - *non-compliance with Act and Regulations;*
 - *professional misconduct, negligence, incompetence.*

Professional Geoscientists Act (Ontario)

Amended 2017

- Section 21, complaints
 - *Investigations;*
 - *Powers;*
 - *Warrants.*
- Section 25, practice restrictions.
- Section 26, discipline.
- Section 31, establishes 3 committees
 - *Complaints;*
 - *Discipline;*
 - *Registration.*
- Section 37, committee members not compellable in civil proceedings.

Code of Ethics

Ontario Regulation 60/01

- Section 2, professional ethics founded on integrity, competence and devotion to service, advancement of human welfare, actions to enhance dignity and status of profession.
- Section 4, no unfair competition on fees alone.
- Section 5, duty to others and environment in professional capacity
 - *good faith;*
 - *knowledge;*
 - *public safety and welfare;*
 - *courtesy and good faith;*
 - *inform other P.Geos if asked to comment on their work.*

Code of Ethics

Ontario Regulation 60/01

- Section 6, competence and knowledge requirement.
- Section 9, avoid conflicts.
- Section 11, advertise only by qualifications and experience.
- Section 12, whistle blower obligations, public health safety.

Discipline decisions

Michael Kilbourne

March 8, 2013

- Professional misconduct for accepting payments for arranging third party contracts with employer.
- Joint submission on 24-month suspension and restitution to US employer of \$180,000.
- In 2011 US court convicted Kilbourne and he was sentenced to prison.
- He subsequently applied for registration but did not disclose the conviction.
- He received a 6-month suspension, he must practice under supervision with regular 6-month reporting requirements afterwards and write an exam.
- The reasons for the decision were:
 - *2-year suspension already completed;*
 - *acceptance of responsibility;*
 - *repaid the \$180,000;*
 - *credible support from third parties;*
 - *sanctions consistent with physicians and surgeons and chiropractor decisions.*

Discipline decisions

Alexander Bradley Bowman

October 29, 2015

- Ministry of Environment (MOE) complaint;
- Hearing held; Bowman did not attend;
- Did not act in good faith, conduct unbecoming, combative dealings with MOE, numerous examples of oral and written bad behavior;
- Required to take anger management course and write apology letter.

Discipline decisions

Dennis Patron

November 10, 2016

- Self represented.
- Alleged disgraceful, dishonorable, unprofessional conduct amounting to professional misconduct relating to news releases.
- Joint submission.
- Received 6-month suspension, must take NI 43-101 course, prior to writing resource or reserve reports, peer review of reports and reprimand conditions.

Discipline decisions

Peter George

December 8, 2016

- Did not attend hearing and resigned as a member.
- NI 43-101 report on Barkerville property having 10 million ounces of gold resources.
- Referenced EGBC consent order on unprofessional conduct on a resource report for a BC property. If he reapplies a new panel to be constituted.

Discipline decisions

John C. Archibald

June 4, 2018

- Self represented.
- Alleged unprofessional conduct and incompetence regarding news releases and a technical report on a Mexican property of First Mexican Gold Corp.
- Certificate made false statements regarding prior involvement with property, independence and report complied with NI 43-101.
- He received 6-month suspension, must take 43-101 course, any report to be peer reviewed.
- Panel recognized his cooperation with BC Securities Commission.
- QcX Gold Corp formerly known as First Mexican, the CEO given a lifetime ban and ordered to pay \$36,790, profit from share sales and an administrative penalty of \$130,000.
- BC Securities Commission banned him from the marketplace for 10 years ordered him to pay an administrative penalty of \$75,000..
- Also, if the commission calls, cooperate and be prompt with the appropriate response.
- Note there are exchange requirement to be met in reports and disclosure as well.
- SK 1300 in the US has rules substantially like NI 43-101 but there are some differences.

Discipline decisions

Ginger Ada Ethel Rogers

July 18, 2019

- Rogers said PGO had no jurisdiction as Association of Engineers and Geoscientists of Alberta (APEGA) had already dealt with the matter and she had already resigned as a member in Ontario.
- Rogers falsified data on soil samples provided to Alberta Environment and Parks and she was fined \$28,750 and barred from filing any report with Alberta Environment and Parks for 3 years under the Alberta Environmental Protection and Enhancement Act.
- APEGA said she could not apply for 3 years, and if she did reapply, she would be required to take the relevant practice exam. APEGA also was to share the findings with sister Canadian and Geoscience Regulators.
- EGBC acknowledged Alberta suspension for 3 years until March 19, 2022.
- EGBC required completion of online practice seminar, a practice review within 12 months of reinstatement and costs of \$20,826.

Discipline decisions

Todd McCracken

September 23, 2021

- Agreed Statement of Facts provided to the panel.
- Reports prepared by McCracken did not comply with NI 43-101.
- He was suspended for 2 months but it was deferred if he complies with mentorship requirements including 9 months of practical supervision, reviewing draft reports, monthly reporting and a final report by the mentor.

EGBC Decisions

Stephen Rice

August 10, 2021

- The Mount Polley tailing storage facility failure.
- Ordered, should he reapply for registration, to complete the professional practice exam, be subject to peer review, and undergo a practice review.
- Ordered to pay the maximum fine of \$25,000 and costs in the amount of \$107,500.

EGBC Decisions

Elwyn (Ted) Burch

December 6, 2018

- Geotechnical work and the registrant was found to have demonstrated unprofessional conduct, incompetence or negligence by fixing his seal to reports in a landslide assessment assurance statement when he represented work could be done for the issuance of a development permit and he was not qualified to do so.
- Acknowledged a demonstration of unprofessional conduct, incompetence or negligence in preparing the reports.
- In a consent order he agreed to the cancellation of his registration, and should he reapply for registration, he would have to complete a professional practice exam and professional engineering and geoscience practice in BC online seminar and not provide landslide assessment services or slope stability analysis services, pay \$3,000 towards investigation and legal costs.
- It was noted that he had previously been the subject of another disciplinary matter.

Discipline decisions

Bernard Boily (OSC decision)

March 29, 2013

- Boily was the VP of Bear Lake Gold Ltd. and acted as its QP. Bear Lake had a property in the Larder Lake area and on July 21, 2009 it announced that it became aware of "material inconsistencies" based on drill results and it withdrew all of its results.
- An independent consulting firm (RPA) confirmed in November 2009 that there were discrepancies in the assay database.
- Boily altered assay results and in news releases referenced false commentary on the expectations for the property. He also provided false data to the independent consultants.
- Boily was banned from trading in any securities for 15 years except for trades by a person with exclusive authority for his locked in retirement account.
- He was permanently barred from being or officer or director of an issuer, a registrant, or an investment fund manager and he is to pay an administrative penalty of \$750,000 and costs of \$50,000

Presentation 4

Secondary Market Liability – What is it, and how can you protect yourself?



Kimberley Burns
Partner
Dentons Canada LLP

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SECONDARY MARKET LIABILITY

Kimberly Burns, Dentons

April 27, 2023

Secondary Market Liability

- **What is secondary market liability?**
 - *Defined terms for misrepresentation and expert are found in the securities legislation (SML is in Part 16.1 of the BC Securities Act)*
- **Definitions:**
 - *“Expert” means a person whose profession gives authority to a statement made in a professional capacity by the person (e.g. accountant, auditor, engineer, geologist or lawyer)*
 - *“Misrepresentation” means:*
 - (a) *an untrue statement of a material fact, or*
 - (b) *an omission to state a material fact that is*
 - (i) *required to be stated, or*
 - (ii) *necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made*

Secondary Market Liability

- **Why do we have this concept in Canada?**
 - Enron Corp. scandal of 2001 and WorldCom scandal of 2002 in the US
 - Starting with Ontario in 2005, other Canadian provinces legislated on secondary market liability
- **Recent Canadian example:**
 - *Nseir v. Barrick Gold Corp.*, 2022 QCCA 1718 – Quebec Court of Appeal allows a class action claim against Barrick Gold Corp. to proceed based on misrepresentations regarding compliance with the environmental legislation.

Secondary Market Liability

- What is the process for the public, the issuer, and the expert when there is a misrepresentation?
 - **Strike suit barrier** – court must grant investors leave to proceed with the claim
 - **No need to prove in court:**
 - Investors' reliance on misrepresentation
 - Malicious intent of experts
 - **Class actions** – *Class Proceeding Act*
 - **Scope of expert's liability:** the higher of \$1m or expert's earnings from the issuer in past 12 months

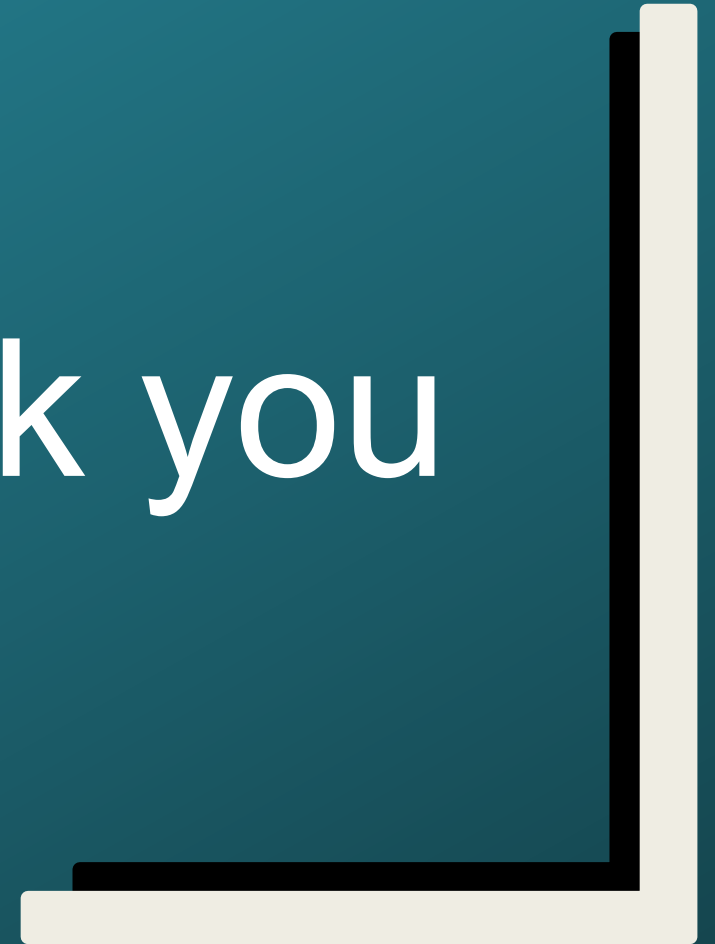
Secondary Market Liability

- **How to protect yourself:**
 - *Due diligence*
 - *Forward looking information – use cautionary language*
 - *Investor had knowledge (anti-sandbagging)*
 - *Reliance on experts by directors and officers*
 - *Unauthorized release or revoked consent*
 - *Corrective action can be a partial defence*

Secondary Market Liability

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

Thank you



Panel Discussion and Q & A Session

Use the chat box to submit your questions

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Panel Discussion

How can Qualified Persons and experts ensure that they meet their responsibilities and obligations when providing advice, opinions, and reports?

Panel Discussion

How can regulators assist Qualified Persons and other experts to help promote confidence in public reporting?

Panel Discussion

What are some of the challenges that Qualified Persons and experts face when it comes to ensuring accurate and reliable reporting?

Panel Discussion

What are some emerging trends in society that Qualified Persons need to be aware of?

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Closing Remarks

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Symposium contact information

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Thank you!

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