



25 Adelaide Street East  
Suite 1100  
Toronto, Ontario M5C 3A1  
Tel: 416-203-2746  
Toll Free: 1-877-557-2746  
Fax: 416-203-6181  
Website: [www.pgo.ca](http://www.pgo.ca)  
E-mail: [info@pgo.ca](mailto:info@pgo.ca)

Chris Collins  
Chief Mining Advisor, Corporate Finance  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2  
Fax: 604-899-6616  
[ccollins@bcsc.bc.ca](mailto:ccollins@bcsc.bc.ca)

Me Philippe Lebel  
Corporate Secretary and Executive  
Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2460, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
Fax: 514-864-8381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

September 13, 2022

**SUBMISSION BY PROFESSIONAL GEOSCIENTISTS ONTARIO (PGO) WITH COMMENTS ON THE NI 43-101  
CONSULTATION PAPER ISSUED APRIL 14, 2022**

To CSA Members:

Professional Geoscientists Ontario (PGO) is a self-regulatory organization governing the practice of professional geoscience in Ontario and reporting to the Ontario Minister of Mines. PGO was created under the Professional Geoscientists Act which received Royal Assent on June 23, 2000.

PGO is governed by a twenty-member Council, supported by committees of geoscience professionals in various disciplines, and a permanent staff. Our mandate is to serve and protect the public interest by governing the practice of professional geoscience in Ontario. To accomplish this the Province of Ontario has entrusted PGO with the responsibility to register geoscientists, admit only persons who pass standards of knowledge and experience, maintain standards of practice and ethics, respond to complaints concerning our registrants, discipline when necessary, and encourage continuing professional competence.

PGO has a membership of over 3,300 full registrants (P.Geo.) and over 600 Geoscientists in Training (GiT). Many of our registrants operate under and report, or support reporting, under guidance delivered by National Instrument 43-101 and Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Definition Standards for Mineral Resources & Mineral Reserves and Mineral Exploration Best Practice Guidelines linked to the Instrument.

We are pleased to submit commentary to the CSA Consultation on 43-101 Standards of Disclosure for Mineral Projects, published April 14, 2022, in support of our organization's mandate to protect the public.

This submission is made in the numbered and lettered sequence followed by the CSA consultation paper.

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

- 3** a) Should we consider greater alignment of NI 43-101 disclosure requirements with the disclosure requirements in other influential mining jurisdictions?

*Alignment to improve disclosure will serve the broadest base of Canadian issuers and the Canadian investing public the CSA represents. However, other influential jurisdictions' disclosure requirements may be limited to some cross-listed issuers and not issuers reporting only in Canada.*

*Alignment to improve the experience and confidence of the investor should not be designed as a cross-referencing exercise. Alignments that are not adopted as replacements to a current disclosure requirement and need explanation of differences would not service the summary nature of the Technical Report or the Canadian investing public.*

***It is recommended that CSA propose replacement disclosure requirements for public review where alignment with other influential mining jurisdictions is being considered, especially if alignment requires changes to supporting guidelines such as the CIM Canadian Mineral Resource and Mineral Reserve Definitions or Canadian Securities Regulatory Standards for Mineral Projects.***

- b) If so, which jurisdictions and which aspects of the disclosure requirements in those jurisdictions should be aligned, and why?

*No comment offered*

- 4** Paragraph 4.2(5)(a) of NI 43-101 permits an issuer to delay up to 45 days the filing of a technical report to support the disclosure in circumstances outlined in paragraph 4.2(1)(j) of NI 43-101. Please explain whether this length of time is still necessary or if we should consider reducing the 45-day period.

*In the 2001 National Instrument, the report submission delay was 30 days after initial disclosure. The later extension to 45 days seemed appropriate and reflective of public input at that time. The motivation to reduce it now is unclear.*

*There is benefit and protection to the investor, and to the regulator, related to disclosure in advance of the completion of the Technical Report. Preparation of Technical Reports are not secret to report writers; they involve the author, the issuer and respective staff as well as other consultants and actors. Pre-emptive summary disclosure may be disseminated in a controlled manner ahead of completion of the report to prevent information leaks and/or stock volatility issues that regulators must address. The 45-day delay allows the issuer to plan and prepare advanced disclosure of confirmed results and fairly disseminate information to the investing public.*

***It is recommended that a delay period remain in the National Instrument and that the delay's length be reviewed for its current relevance.***

## **B. Data Verification Disclosure Requirements**

8. Given that the current personal inspection is integral to the data verification, should we consider integrating disclosure about the current personal inspection into Item 12 of the Form rather than Item 2(d) of the Form?

*Data review and verification are already a form of personal inspection which is largely removed from, and lengthier than, a physical inspection. Data verification may use several persons working under a qualified person who may not be necessary or qualified to make a site inspection. Such data may not reside where a physical inspection needs to occur. The appropriate physical investigation to support data verification during a current personal inspection can be carried out by the qualified person who must make the visit.*

***The integration of the current personal inspection into Item 12 is not recommended.***

## **E. Qualified Person Definition**

CSA staff have substantial evidence that the current qualified person definition is not well understood and have seen an increase in practitioners with less than 5 years of experience as professional engineers or geoscientists acting as qualified persons in technical reporting. CSA staff have directed many comments to issuers informing them that the qualified person does not meet the requirements of NI 43-101 in the circumstance under review.

16. Is there anything missing or unclear in the current qualified person definition? If so, please explain what changes could be made to enhance the definition.

### **Qualified Persons**

*Many PGO registrants have identified themselves as qualified persons as defined under the Instrument. National Instrument (NI) 43-101 - Standards of Disclosure for Mineral Projects is one*

*of three formal documents CSA provides to the public, along with Form 43-101F1 Technical Report (the Form) and Companion Policy 43-101CP Standards of Disclosure for Mineral Projects. These documents all carry weight in the preparation of a Technical Report and other disclosure. The Instrument and the Companion Policy in particular figure jointly in providing criteria under which a qualified person must self-define. It is noted that the Instrument does not refer to the Companion Policy or require that the Companion Policy be read in conjunction with the Instrument. The Companion Policy contains important information related to the needed experience requirements for qualified persons.*

***It is recommended that the qualified person definition be enhanced by its referring to its own supporting description in Companion Policy NI 43-101CP or consolidated in the Instrument. The combined description is more fulsome than the limited description in the Instrument and provides greater information regarding the required depth of experience. Further, it is recommended that in future modernizations of NI 43-101, the Companion Policy be similarly reviewed and updated as a necessary document.***

### **CSA Challenges to Qualification**

*It is our experience that there has been considerable confusion about what constitutes the requirement of 5 years relevant experience. Currently the Companion Policy uses the wording “5 years of professional experience”, implying that said experience must be accumulated following professional registration. However, a number of our registrants have observed that, depending on the particular circumstances of individuals, particularly those who have been trained and have practiced in foreign jurisdictions, such relevant experience could be accumulated prior to professional registration in a Canadian jurisdiction.*

***It is recommended that more clarity around what is and what is not acceptable as the 5 years of relevant experience be introduced. This would help to mitigate self-declaration that is not acceptable by CSA and would be appreciated by both applicants and professional geoscientists.***

***It is recommended that if the CSA members will be returning reports to issuers indicating that the authors are not qualified to complete such reports, they identify the specific elements of qualification on which they are relying for the decision.***

### **Critical Minerals and Qualified Person Identification**

*It is important to understand the qualified person’s self-definition in the context of the report and their experience. This will be increasingly a concern as discussion around qualification begins to cover critical minerals with greater regularity. All critical minerals deposits have as their basic definition a geological model. The fact that minerals such as Tellurium, Antimony or Nickel are now being more frequently considered for definition in disclosure under NI 43-101 does not mean that the deposit type or genesis are new to, or beyond the experience of, the Author to report.*

*Tellurium, for example, is a common metal in many Canadian gold deposits and now identified in critical minerals policy. The association with gold provides Canadian geoscientists with considerable experiential knowledge to identify and develop models that define and quantify*

*Tellurium within a deposit, not to mention include the important economic aspect of the related gold mineralization on which Tellurium extraction could depend.*

***It is recommended that CSA create a publicly available criterion from which Qualification can be identified if critical minerals require a more complex qualified person definition. Such criteria can be used pre-emptively to assist issuers when seeking one (or more) independent qualified persons. CSA members have prepared good guidance in the past on disclosure related themes and can play a role here.***

### **Jurisdiction and Qualified Persons**

*An underpinning of professional practice in Canada in recent years is mobility. A professional is encouraged to seek acceptable registration in a jurisdiction that regulates the practice of engineering or geoscience when at work there, based on a mutual recognition of their professional standing.*

***This is a criterion that can be reinforced in Companion Policy by defining the qualified person as being registered with a professional association of the jurisdiction in which the project is located in Canada and for projects outside of Canada where an appropriate professional association has been recognized by the CSA in Appendix A of the Companion Policy***

17. Should paragraph (a) of the qualified person definition be broadened beyond engineers and geoscientists to include other professional disciplines? If so, what disciplines should be included and why?

*The Consultation appears to be asking whether the Instrument include more professionals but has not shared the experience of which types of professionals CSA has observed who may be relevant.*

***With consideration to the clarification about 5 years experience mentioned in item 16 above, it is recommended that the qualified person professional criteria (education, experience, SRO membership) not be modified to accommodate experts that cannot meet these criteria.***

*There is currently identification of experts in Form 1 - Item 3 Reliance on other Experts (information provided by the issuer, concerning legal, political, environmental or tax matters relevant to the technical report...). This is a section of the Instrument that can explicitly broaden the scope of professional input, especially in terms of improved Environmental, Social and Governance (ESG) reporting. It is also a section where the relied-upon expert's qualifications can be made visible.*

*Integration of ESG specialists, who may not belong to Self Regulating Organizations, but manage broad and continuous disclosure within CSA's Continuous Disclosure framework, can offer more comprehensive and thoughtful discussion of non-geoscience and engineering matters affecting a Project.*

***If reliance on a subject expert cannot be supported by the current qualified person definition, it is recommended that CSA develop a statement of qualifications that can clearly describe a non-technical subject expert's education and relevant experience.***

## Qualified person independence

The gatekeeping role of the qualified person is essential for the protection of the investing public. CSA staff see evidence of issuers and qualified persons failing to properly apply the objective test of independence set out in section 1.5 of NI 43-101. The Companion Policy provides certain examples of specific financial metrics to consider. This list is not exhaustive. There are multiple factors, beyond financial considerations, that must also be considered in determining objectivity, including the relationship of the qualified person to the issuer, the property vendor, and the mineral project itself.

18. Should the test for independence in section 1.5 of NI 43-101 be clarified? If so, what clarification would be helpful?

***As with item 16 above, it is recommended that the qualified person definition be enhanced by its own supporting description in Companion Policy NI 43-101CP. Neither NI 43-101 nor 43-101F1 make reference to the Companion Policy. A clear statement that the Instrument should be read in conjunction with the Form and the Companion Policy would improve the understanding of the test for independence.***

## G. Exploration Information

CSA staff continue to see significant non-compliant disclosure of exploration information, including inadequate disclosure of:

- the QA/QC measures applied during the execution of the work being reported on in the technical report,
- the summary description of the type of analytical or testing procedures utilized, and
- the relevant analytical values, widths and true widths of the mineralized zone.

18. Are the current requirements in section 3.3 of NI 43-101 sufficiently clear? If not, how could we improve them?

***It is not recommended to increase the level of detail in 43-101 to make it unwieldy. However, as noted previously, improved referencing in NI 43-101 to pertinent and currently CSA identified supporting documents such as the CIM Mineral Exploration Best Practice Guidelines (identified in the Companion Policy but not the Instrument or the Form) may improve outcomes.***

## Items I. Environmental and Social Disclosure and J. Rights of Indigenous Peoples

*This Consultation should consider that Technical Reports written under NI 43-101 are one part of an issuer's disclosure obligations. The Technical Report as defined in the Instrument is reporting the state of a mineral project at a given time. It should not be the intent of the NI 43-101 Technical Report to become a continuous disclosure mechanism.*

*The CSA, in this Consultation, is asking about the importance and inclusion of greater information of nontechnical risk factors, such as changes to socio-political, indigenous and environmental condition. Many social and political impacts on a project; conflicts, negotiations, regulations and*

*policy implications can evolve and resolve themselves over periods of time where the technical aspects of the deposit have remained materially unchanged.*

*Important information such as ESG and Indigenous matters informs a Technical Report at one point in time. It is the responsibility of the issuer to provide regular and ongoing information as these matters present themselves and as they become material to the project, even when technical parameters remain unchanged. An issuer's disclosure tools already include ongoing or continuous disclosure rules to provide technical and material information related to the issuer's properties in a timely fashion.*

***It is recommended that the CSA encourage issuers to deepen the required descriptions of information under Item 20 Environmental Studies, Permitting and Social or Community Impact which will align disclosure with increased expectations from the investing public. They should use appropriate experts for this effort.***

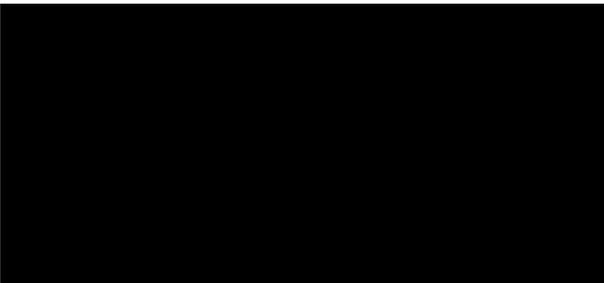
*The CSA must be cautious when assessing disclosure in these Items. A Project's environmental, political and social condition can evolve rapidly. Such disclosure in a Technical Report certified on a given date can quickly become outdated. The CSA may wish to consider these as corporate risks rather than technical risks and address their regular disclosure outside of NI 43-101.*

Respectfully submitted



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Bill McGuinty, Chair, Geology sub-Committee



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Melanie Siewert, President

Cc: Tony Andrews, CEO