

**THIS EXAMINATION CONSISTS OF 10 PAGES
(6 PAGES OF QUESTIONS PLUS SCHEDULES A AND B)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – DECEMBER 2021

LAW 394
Mining Law

Section 1
Instructors: Alan Monk and Don Collie

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS
and 15 minutes reading time

- NOTE:
1. This is a closed book examination. You are permitted to take into the exam one sheet (two sided) of paper with your notes, but no other documents (i.e., printed course materials or materials distributed to the class during the course) are permitted to be accessed.
 2. Refer to legislation and regulations and case law, where applicable.
 3. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 20 QUESTIONS

MARKS

- 6 1. You act for Hobb's End Resources ("**Hobb's End**"), which is a private British Columbia company headquartered in Vancouver. Hobb's End has a mineral exploration property (called the Sutter Cane property) in an extremely remote and rarely explored part of Northern BC. Linda Styles, the Vice-President of Exploration for Hobb's End, has sent you an email in which she expresses surprise and outrage that she has received an email (which she refers to as a "nastygram") from British Columbia Securities Commission staff. In the BCSC email, staff has advised her that because Hobb's End has a write-up on its website that discloses an initial resource estimate for the Sutter Cane property, Hobb's End is required to prepare and file a technical report with the BCSC. Ms. Hobbs advises you that she has reviewed the technical report triggers in Section 4.2(1) of National Instrument 43-101 (**reproduced at Schedule A to this Exam**), and as far as she can see, all of these triggers only apply to public companies, they don't apply to private companies. She has asked you to confirm that her view is correct and if not, to please point out to her the justification for staff's position and in particular, which specific technical report trigger in Part 4 of NI 43-101 would require Hobb's End to file a technical report in this situation.
- 6 2. Your client, Wildheart Minerals Ltd. ("**Wildheart**"), is a reporting issuer whose shares trade on the TSX. About a month ago, Wildheart issued a press release disclosing a substantial increase in its mineral resource estimate at its Lula Fortune property in California. Sailor Ripley, Wildheart's CEO, has just received a draft of the NI 43-101 technical report from Perdita Durango, the Qualified Person that Wildheart retained to prepare the report. The report is entitled "Upgraded Resource Estimate for Lula Fortune Silver-Gold Property, Farragut County, California, USA." Mr. Ripley tells you that he is confused, because upon reviewing the technical report against the requirements of Form 43-101F1 (**he has checked the report against the table of contents reproduced at Schedule B to this Exam**), he notices that Ms. Durango has not completed any of Items 15 to 22 of Form 43-101F1. Mr. Ripley asks you why those sections are blank, shouldn't they be completed in order for the report to be compliant? How do you advise Mr. Ripley?
- 6 3. If the President of a Canadian public mining company, who is not a "qualified person" within the meaning of National Instrument 43-101, provides an update on her company's quarterly financial results at an industry conference, are her comments subject to compliance with National Instrument 43-101? Must they be approved by a Qualified Person? Why or why not?

6 4. You act for Sierra Madre Resources Ltd. (“**Sierra Madre**”), which has a gold project, called the Tampico Project, in Mexico. Sierra Madre is incorporated under the CBCA, is headquartered in Vancouver, is a reporting issuer in all jurisdictions of Canada and its shares are listed on the TSX Venture Exchange. Sierra Madre retained Fred C. Dobbs to prepare a technical report relating to the initial resource estimate for the Tampico Project. When Mr. Dobbs submitted his qualifications to Sierra Madre in order to get the work, his resume disclosed that, among other things:

- Mr. Dobbs is a Professional Geologist

- He is a Graduate of the University of British Columbia with a M.Sc. in Geological Sciences

- He has over 20 years’ experience working on base metal projects

- He is a Member of the Association of Professional Engineers and Geoscientists of British Columbia in good standing

Sierra Madre filed the technical report on SEDAR. BC Securities Commission Staff has now written a letter to Sierra Madre, saying that it is not appropriate for Mr. Dobbs to be the author of this technical report. Do you agree with BCSC Staff’s position? Why or why not?

4 5. What is the main form of *regulatory* risk that a mining issuer faces in a prospectus offering, compared to a private placement, which might cause a mining issuer to shy away from it and proceed with a private placement instead?

4 6. What is a major type of commercial agreement which would be required and present in a brokered private placement and in a prospectus offering, but would not be required or present in a non-brokered private placement?

- 4 7. In the context of a mining industry confidentiality agreement, which party would be most concerned about having the explicit contractual right to seek an injunction for breach of the agreement? The disclosing party or the recipient of the information? Why?
- 4 8. You act for Hitchcock Mining Company ("**Hitchcock**"), which is interested in purchasing or earning an interest in the Perkins Gold Property, located in Arizona. The Perkins Gold Property is currently owned by Norm Bates. Hitchcock and Mr. Bates are negotiating the terms of a Confidentiality Agreement pursuant to which Mr. Bates would provide confidential information on the Perkins Property to Hitchcock. Marion Crane, the CEO of Hitchcock, is a bit concerned about Mr. Bates' behavior, which she sometimes finds to be odd and unpredictable. Thus she is particularly concerned about protection from possible future litigation over the Confidentiality Agreement. Specifically, while she understands Mr. Bates' legitimate need to protect his information, she wants to make sure that Hitchcock can still carry on its legitimate, ordinary-course business activities, and that it can continue to carry out its mineral exploration and related activities without an unreasonable fear of being sued. She asks you if there is any provision that you can insert into the Confidentiality Agreement that might address her concerns. What do you say in response to this?
- 6 9. You are acting for an optionor in the context of a mineral property option agreement. Under the proposed terms of the option agreement, your client would receive as consideration, among other things, (a) annual cash payments of \$1,000,000 on each of the 5 anniversary dates of the date of the option agreement, and (b) annual exploration expenditures made on the property of \$2,000,000 in each of the 5 years following the date of the option agreement, in order for the optionee to earn its option. However, your client is concerned that if the optionee were to invoke force majeure, as long as the force majeure declaration remains in place, your client would not receive any payments. What are some provisions which can be added to the force majeure clause to ensure that it does not enable an unscrupulous optionee to simply ignore its payment and other contractual performance obligations while keeping your client's property tied up indefinitely?

- 4 10. You are acting for a client who is proposing to be an optionee under a mineral property option agreement which would run for a 5-year period. As is typical for such agreements, during the option period, your client would be responsible for all holding and maintenance requirements relating to the mineral claims (e.g., the requirement to conduct and file annual assessment work on the claims or make payment in lieu). Your client has expressed concern about the fact that there are a large number of claims comprising the property. Also, your client is confident that after it has completed the first year of exploration on the property, it will have a pretty good idea of where the mineral deposit is, and which claims are really valuable and which ones are not. Your client asks you if there is some sort of provision that can be added to the agreement to address its concern about having to keep paying for claims that it is no longer interested in.
- 3 11. (a) In which registry or recording system would you search for placer claims? (b) In which registry or recording system would you search for crown granted mineral claims? (c) In which registry or recording system would you search for mineral claims?
- 3 12. Your client calls you and asks if they can stake a crown granted mineral claim, since they know a competing exploration company in the area of their primary exploration property has them. How do you advise your client?
- 7 13. Please compare and contrast a net smelter return royalty with a net profits interest royalty. Which of the two royalties would be considered in a feasibility study as a cost to the project and why?
- 2 14. What is a gross overriding royalty and what minerals is it suitable for?
- 1 15. What is another name for a "preliminary economic assessment"?
- 4 16. When is a permit required for exploration work under the *Mines Act* (BC)? Please explain your answer.

- 6 17. Please describe how a claim is staked in B.C. today (as opposed to before January 12, 2005) and explain what a legacy claim is.
- 7 18. Your client calls you up and tells you he wants to access his new mineral claim, and must cross over Crown land to do so. (a) Please advise him of what his rights are and what he has to do in order to exercise those rights. (b) Your client asks if he can "stake" (acquire) a series of mineral claims from the nearest highway to his mineral claim and access his mineral claim by travelling over the new claims. Please advise him.
- 10 19. Your client calls you up and tells you that her company, Mega Moola Mining Ltd., plans to build a mineral copper/ gold mine (as opposed to a placer mine) with a capacity of 150,000 tonnes/year of mineral ore, and the construction of the mine will require the removal of a lake used by recreational fishers. Please advise her what she will need to do and what legislation will apply in order to obtain a mining permit.
- 7 20. What is a "restricted use" clause and compare and contrast it with an "Area of Exclusion" in a Confidentiality Agreement? If a recipient of confidential information stakes a claim within an Area of Exclusion as set out in a confidentiality agreement to which it is a party, but it does not use confidential information to do so, is it in breach of the confidentiality agreement?

END OF EXAMINATION

SCHEDULE A TO EXAM

Excerpt from Part 4 of National Instrument 43-101F1

**Obligation to File a Technical Report in Connection with
Certain Written Disclosure about Mineral Projects on Material Properties**

4.2 (1) An issuer must file a technical report to support scientific or technical information that relates to a mineral project on a property material to the issuer, or in the case of paragraph (c), the resulting issuer, if the information is contained in any of the following documents filed or made available to the public in a jurisdiction of Canada:

(a) a preliminary prospectus, other than a preliminary short form prospectus filed in accordance with National Instrument 44-101 Short Form Prospectus Distributions;

(b) a preliminary short form prospectus filed in accordance with National Instrument 44-101 Short Form Prospectus Distributions that discloses for the first time

(i) mineral resources, mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer; or

(ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer;

(c) an information or proxy circular concerning a direct or indirect acquisition of a mineral property where the issuer or resulting issuer issues securities as consideration;

(d) an offering memorandum, other than an offering memorandum delivered solely to accredited investors as defined under securities legislation;

(e) for a reporting issuer, a rights offering circular;

(f) an annual information form;

(g) a valuation required to be prepared and filed under securities legislation;

(h) an offering document that complies with and is filed in accordance with Policy 4.6 - Public Offering by Short Form Offering Document and Exchange Form 4H - Short Form Offering Document, of the TSX Venture Exchange, as amended;

(i) a take-over bid circular that discloses mineral resources, mineral reserves or the results of a preliminary economic assessment on the property if securities of the offeror are being offered in exchange on the take-over bid; and

(j) any written disclosure made by or on behalf of an issuer, other than in a document described in paragraphs (a) to (i), that discloses for the first time

(i) mineral resources, mineral reserves or the results of a preliminary economic assessment on the property that constitute a material change in relation to the issuer; or

(ii) a change in mineral resources, mineral reserves or the results of a preliminary economic assessment from the most recently filed technical report if the change constitutes a material change in relation to the issuer.

SCHEDULE B TO EXAM

Form 43-101F1

Technical Report

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