

The logo for Osgoode Hall Law School, featuring the word "OSGOODE" in white, uppercase letters on a red rectangular background.

OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

Ontario Securities Commission
Enforcement Branch
20 Queen Street West
20th Floor
Toronto ON, M5H 3S8

VIA EMAIL: inquiries@osc.gov.on.ca

August 5, 2021

Re: Continuous Disclosure Obligations and Reporting to Investors by Noront Resources Ltd. in relation to the Ring of Fire

Dear OSC Investigations Staff,

We write to bring some questions and concerns to the attention of the Ontario Securities Commission, Enforcement Branch, jointly on behalf of Osgoode Hall Law School's Environmental Justice & Sustainability Clinic, Greenpeace Canada, the Council of Canadians, and MiningWatch Canada.¹ We are seeking an investigation into whether Noront Resources Ltd. ("Noront") may have breached securities law by failing to disclose material facts and material changes with respect to the extent of Indigenous opposition to its ongoing plans and activities in the Ring of Fire. In our review of Noront's disclosures, it appears that Noront has disclosed only partial information about relevant relationships with affected Indigenous communities, with the potential for misleading investors. Specifically, it appears that Noront has failed to provide a full account of the dissent voiced by various First Nations in the region in relation to its assets and projects, which may violate its continuous disclosure obligations under Ontario securities law.

The Ring of Fire is a mining district in the far north of Ontario, located approximately 500 kilometres northeast of Thunder Bay. Noront is a publicly traded company incorporated under Ontario's *Business Corporations Act* and is involved in the exploration and development of base and precious minerals. Noront holds interests in a nickel, copper and platinum group element deposit called Eagle's Nest and three chromite projects located in the Ring of Fire. In recent weeks, Noront has been the subject of multiple take-over bids by major mining companies and is currently undergoing a formal independent valuation process.

Noront's lack of transparency goes against current trends in information disclosure. In fact, earlier this year, Ontario's Capital Markets Modernization Taskforce made a number of recommendations for improving the province's investment environment that acknowledged "increased global momentum towards enhanced disclosure of the Environmental, Social and Governance (ESG) factors that impact a company's financial performance."² Indigenous impacts and opposition are increasingly becoming more prominent Social and/or Governance factors to be considered in responsible resource development decision-making.

We request that the Ontario Securities Commission (OSC) investigate whether and to what extent Noront may have breached disclosure requirements under Ontario's securities legislation and policies. We hope that an investigation will lead to more accurate reporting by Noront, and by other companies, regarding their relationships with Indigenous communities affected by their business activities. In turn, this may discourage practices that lead to conflict over lands and resources.

Background: Ongoing Access Challenges Affecting the Ring of Fire

Noront's Ring of Fire projects are located in James Bay Treaty territory (Treaty No. 9) and are impacting the Aboriginal and Treaty rights of the First Nations who live on the land and exercise those rights, as well as their obligations under Indigenous laws to steward the lands and waters of the Ring of Fire region. There are nine First Nations that are part of the Matawa Tribal Council who are most directly impacted (including five remote communities) and several downstream Mushkegowuk communities whose rights will be impacted (such as Attawapiskat First Nation, Fort Albany First Nation and others). As you know, the Aboriginal and Treaty rights of the affected First Nations are constitutionally protected.

Of the nine Matawa Tribal Council communities, Webequie First Nation, Marten Falls First Nation, and Aroland First Nation are currently working with Noront either as 'proponents for the purpose of environmental assessments', or as signatories to agreements. Nibinamik First Nation, Neskantaga First Nation, Long Lake #58 First Nation, Ginoogaming First Nation, Eabametoong First Nation, and Constance Lake First Nation have not publicly agreed to work with Noront. Eabametoong and Neskantaga First Nations have been vocal about the need to protect lands, water, wildlife, wetlands, and the river system from the impacts of the projects.³

Noront's existing Esker Camp, located east of the Muketei River and used for regional exploration activities, is on the traditional territory of Neskantaga First Nation. Noront proposes to build final site accommodations at the Esker Camp to house construction crews, expected to peak at approximately 600 people. The Esker Camp and the Ring of Fire mineral deposits are in the Attawapiskat River watershed. They are currently inaccessible by rail or road and there is significant uncertainty surrounding the feasibility of current road plans necessary to connect them to the provincial highway network. A north-south road to reach the Ring of Fire will need to cross the Attawapiskat River.

The cost of the road to the mining district has been reported at more than \$1.6 billion.⁴ In the past, the Province of Ontario pledged \$1 billion for the road to the Ring of Fire, but there are currently no public commitments to Ring of Fire infrastructure funding from either Ontario or Canada.⁵

Further, the road projects are undergoing both provincial and federal environmental/impact assessment processes and there is also a Regional Assessment being conducted for the Ring of Fire by the Impact Assessment Agency of Canada. The roads and the eventual mines will require various permits and licences from local, provincial and federal authorities. In all of these venues at multiple stages, First Nations whose rights will be impacted by the projects have been intervening to express their dissent.

What has Noront Disclosed?

i) Annual Reports

In recent Annual Reports issued by Noront, the nine Matawa First Nation communities in the region of the Ring of Fire deposits are barely mentioned, outside of references to partnerships with Marten Falls First Nation, Webequie First Nation, and Aroland First Nation. Neskantaga First Nation is not mentioned, nor are the downstream Mushkegowuk communities.⁶ All annual reports from 2015-2020 have included the same three paragraphs under the ‘risks’ section, stating:

“Noront is committed to working in partnership with our local communities and First Nations in a manner which fosters active participation and mutual respect. Noront works towards minimizing negative project impacts, encouraging certain joint consultation processes, addressing certain decision-making processes and towards maintaining meaningful ongoing dialogue not only for the Company but for all participants in the Ring of Fire region.

Many of Noront’s contractors and suppliers live and work in the local communities. The Company regularly consults with communities proximal to the Company’s exploration activities to advise them of plans and answer any questions they may have about current and future activities. The objective is to operate to the benefit of the shareholders and the local communities using the resources and the environment today without compromising the long-term capacity to support post exploration and ultimately post mining land uses.

First Nations in Ontario are increasingly making lands and rights claims in respect of existing and prospective resource projects on lands asserted to be First Nation traditional or treaty lands. Should a First Nation make such a claim in respect of the Properties and should such claim be resolved by government or the courts in favour of the First Nation, it could materially adversely affect the business of Noront. In addition, consultation issues relating to First Nation interests and rights may impact the Company's ability to pursue exploration, development and mining at its projects and could result in costs and delays or materially restrict Noront's activities.”⁷

We have two concerns with this. First, this language fails to acknowledge that there are specific First Nations whose rights will be affected by these projects, and who are currently making “lands and rights claims.” Second, this section remains unchanged over five years. The language thus leaves the investors with the impression that the situation is stable, rather than volatile, and that no First Nations have made any recent and specific claims or assertions relevant to Noront’s projects. Instead, we believe that Noront’s disclosures should be responsive to the changing circumstances regarding the positions local First Nations have taken that register their continuing opposition to the Eagle’s Nest project.

ii) Annual Information Forms

First, we note that we have not been able to locate a recent Annual Information Form (AIF) for Noront. The most recent AIF posted to SEDAR is from 2018 that was published on April 15, 2019.⁸ This raises serious concerns about gaps in reporting to investors.

As a result, Noront's most recent AIF, from 2018, contains the same three paragraphs quoted above regarding risk from First Nations' claims or consultation issues. The AIF only mentions First Nations other than Webequie and Marten Falls to note that Noront's Esker Camp is located on the traditional territory of Neskantaga First Nation, and to note that the Nibinamik First Nation, Eabametoong First Nation, and Mishkeegogamang First Nation are located in proximity to the region and the proposed all-season road corridor.⁹ Noront further acknowledges in the 2018 AIF that Attawapiskat First Nation is located downstream of the project.¹⁰

We will also highlight that Noront's AIFs from 2015-2018 included a statement of corporate social responsibility policies. In particular, Noront states that "The company commits to its stakeholders to work to create benefits and opportunities that contribute to their economic and social sustainability, to protect the natural environment, and commits to its employees to maintain a safe and healthy work environment".¹¹ In the AIFs from 2015-2017, Noront states further that it has adopted a formal 'Aboriginal' policy statement, and that "Noront has listened to local communities' concerns and adjusted practices and designs to address them. Engagement with neighbours has extended to hiring local aboriginal people into management and other roles at Noront, benefiting sustainability and social responsibility commitments."¹² This section was not present in Noront's most recent AIF, for 2018.

iii) Management's Discussion and Analysis

Surveying Noront's MD&As for all of 2020 and 2019, the language related to First Nations repeats what it stated in the Annual Reports and AIFs discussed above. Again, there is no mention of any specific positions taken by any of the region's First Nations other than Webequie, Marten Falls, or Aroland, all of whom are negotiating or have negotiated agreements or Memoranda of Understanding with Noront.

iv) News Releases

Similarly, none of Noront's news releases or material change reports from 2020 and 2019 contain any reference to First Nations other than to reference Webequie First Nation or Marten Falls First Nation as proponents of the road project environmental assessments.

What is Missing from these Disclosures?

We now turn to the details of what the opposition to Noront's projects from First Nations has been, and whether the extent of that opposition constitutes a 'material fact' or a 'material change' that Noront should have disclosed. In our view, it is misleading to name only the First Nations that

have signed agreements with the province and the company, while neglecting to mention the divisions within Matawa, the vocal opposition of Neskantaga First Nation, and the ongoing dissent in the Mushkegowuk communities. To be clear, when communities express opposition to “Ring of Fire developments”, they are expressing opposition to Noront’s projects. In the company’s own words on its website’s landing page, Noront has “ownership or a controlling interest of all the major discoveries in the Ring of Fire to date”.

Neskantaga First Nation has been contesting the planned developments in the Ring of Fire region over the entire period for which we reviewed Noront’s disclosures, on a number of occasions and in a variety of ways, including by threatening legal action and making statements to the media.¹³ In recent years, other First Nations have also expressed opposition to and dissatisfaction with Noront’s projects and the processes being employed to approve them. While this letter does not provide an exhaustive account, some recent examples are included under each category of material information that has not been disclosed.

i) Material Information about Opposition to the Proposed Roads

It is relevant to Noront investors that the mining company may not be able to access its assets due to a lack of Indigenous consent. In August of 2017, in response to Ontario’s Ring of Fire road announcements, both Neskantaga and Eabametoong First Nations objected publicly. Chief Wayne Moonias of Neskantaga stated, “The reality is that all the roads to the Ring of Fire traverse the territory of our Nations, and nothing is happening without the free, prior and informed consent of our First Nations”. Further, then Chief Elizabeth Atlookan of Eabametoong stated, “I am disappointed to see an announcement by the Wynne government about building roads in our territories when there is no community approval of a proposed agreement recognizing the inherent rights and treaty rights of first Nations over territories.”¹⁴

On November 9, 2018, Neskantaga First Nation and Eabametoong First Nation issued a Declaration of Alliance and Shared Regulatory Territory. In this declaration, the two First Nations with rights at stake made their opposition to the planned environmental assessment processes clear (with Webequie and Marten Falls as proponents of individual projects). Then Chief Atlookan of Eabametoong stated that “Ontario is not only frustrating a process that we established as Treaty partners, they are now creating unnecessary legal risk for the Ring of Fire projects and access roads”.¹⁵ Then (and current) Chief Wayne Moonias of Neskantaga added that “The homelands of Eabametoong and Neskantaga are in the path of these proposed industrial mining roads and some of the richest orebodies in the [Ring of Fire] area, but we will fight back unless we arrive at a negotiated agreement with Ontario on the scale, pace and forms of development that are helpful to our people as we work towards a sustainable future.”¹⁶

ii) Material Information about Opposition to the Issuance of Permits

In a number of correspondences dating back to at least 2016 and extending to the present, Neskantaga First Nation has been in contact with the Ministry of the Environment Conservation and Parks and has both played a role in and objected to details of the environmental assessment processes in the Ring of Fire. Many of these exchanges have been documented in the regional and national media.¹⁷ A CBC News headline from 2016 reads “‘Cease and desist,’ Neskantaga First

Nation tells Ring of Fire mining company.” The article quotes Chief Wayne Moonias as saying, “The fact that the company can just go into an area where they don't have the consent or the involvement of First Nations — it is unacceptable for the government to be issuing these permits.”¹⁸

iii) Material Information about Escalation of Conflict

In reaction to the announcement at the PDAC meeting in 2020 that Marten Falls First Nation and Webequie First Nation would become road proponents for the purpose of environmental assessment, Chief Chris Moonias of Neskantaga reminded reporters that the community had not been consulted and that the road crosses a river in their traditional territory: “The community will decide what they're going to do. They have already said a lot of times that if they have to go out to the land and protect the river, they will.”¹⁹

iv) Material Information about the Potential for Regulatory Delays

And finally, as recently as January 12, 2021 Neskantaga First Nation and the Mushkegowek Council issued a call for a moratorium on development in the Ring of Fire that garnered significant public attention and support by many prominent Canadian environmental organizations.²⁰ Attawapiskat, Fort Albany, and Neskantaga First Nation declared a formal moratorium on April 1, 2021, stating concerns about Canada’s failure to meaningfully involve the First Nations in its planned Regional Assessment for the Ring of Fire.²¹ As Noront well knows and is evidenced by the fact the company has been forced to amend its projected timelines for the Eagle’s Nest project many times, the opposition of affected First Nations is creating regulatory delays.²²

These are only some of the many instances in which Indigenous peoples of the region have expressed dissent and drawn attention to expected adverse impacts from Noront’s planned activities in the Ring of Fire and potential deficiencies with how the regulatory processes to approve them are being conducted.

Information About First Nations Opposition is ‘Material’

As we understand it, a question then arises as to whether the extent of this opposition by impacted Indigenous communities is sufficiently ‘material’ as to warrant disclosure by Noront. Section 162.2(1) of the Ontario *Securities Act* prohibits a person or company from making a statement that is, in a material respect, misleading or untrue, or omits information that would be necessary to make the statement not misleading. Likewise, a person or company shall not make a statement that would reasonably be expected to have a significant effect on the market price or value of their stock.²³

Further, the jurisprudence indicates that investors should be made aware of facts that would “reasonably be expected to significantly affect the market price or value of the securities”.²⁴ Courts have found that political changes in the region affecting a company’s operations are material changes that should be disclosed. A company’s officers cannot simply take an “optimistic view” that the situation will improve and hope for the best.²⁵ This finding was confirmed in (*Re*)

Coventree Inc., 2011 where the court found that “while circumstances may vary, the subjective and optimistic hope or view of senior officers that they may be able to negotiate a different outcome or solution with a third party is not generally going to be sufficient to relieve an issuer from forthwith disclosing events that would otherwise constitute a material change.”²⁶

With these holdings in mind, we believe that significant, sustained, and vocal opposition from rights-holding First Nations that also attracts some level of public attention should be considered ‘material’ and require disclosure. An assessment of ‘materiality’ depends on the specific factual context. In this light, it is relevant that many of the interventions made by Neskantaga First Nation and the Mushkegowuk nations have called for a more in-depth process or more complete consideration of the environmental impacts that will result from infrastructure developments necessary to the projects proposed for the Ring of Fire. For example, the *Companion Policy 43-101CP to National Instrument 43-101- Standards of Disclosure for Mineral Projects* stipulates that “[i]nformation that is immaterial today may be material tomorrow; an item of information that is immaterial alone may be material if it is aggregated with other items.”²⁷

It is well known that one of the major obstacles to mining in the Ring of Fire region has been the inability of governments to make the commitments to providing road access that exploration and mining companies have desired; this hesitance has been tied directly to the continuing opposition of some crucial First Nation communities, including Neskantaga First Nation. Thus, while Noront’s officers may be of the view that the continuing Indigenous opposition to their project alone is immaterial because other area First Nations are onside, when combined with its potential for slowing down the required infrastructure to make the project viable, we would argue that the opposition easily meets the ‘materiality’ test and is highly relevant to investors.

Foreseeable risks to Noront investors from First Nation opposition to the roads and mine may include delays or stoppages in project execution from legal or regulatory actions, challenges or blockades; increased regulatory oversight; reduced support of the federal and provincial governments; delays in, challenges to, or the revocation of regulatory approvals and permits; and increased costs and/or project cost overruns. Further, Noront faces reputational risk related to negative publicity stemming from opposition to the projects by affected First Nations opposed to the scale, timing and forms of proposed road and mine development, particularly in a political context in which mining companies are increasingly expected to adhere to standards of free, prior and informed consent (FPIC).²⁸

Conclusion

Recent empirical evidence points to the fact that failures to consult Indigenous peoples affect share prices, and that investors regard conflict with local Indigenous communities as a risk to their investment and one that should be legally required to be disclosed.²⁹ One of these studies by The Shift Project led by Professor John Ruggie of the Kennedy School at Harvard University emphasized that companies should be providing a “comprehensive account” of the situation on the ground, rather than “cherry-picking” favorable facts.³⁰ While it is true that Noront has secured the support of three First Nations in the region, it is also the case that several other affected First Nations have been consistently voicing opposition and dissent. We believe that an accurate disclosure of material facts and changes would include details about the extent of this opposition.

From our review, it seems that Noront has not disclosed that it is exposed to legal and reputational risks related to Aboriginal and Treaty rights claims and assertions that could block or significantly delay the construction of the roads to the Ring of Fire, and which threaten the longer-term viability of its projects.

We are of the view that an investigation by the OSC is warranted to confirm whether Noront has failed to meet its continuous disclosure obligations by not providing shareholders and potential investors with a full and accurate appreciation of the risks facing Noront and its Eagle's Nest and other Ring of Fire projects.

Sincerely,



Dayna Nadine Scott
Associate Professor,
Osgoode Hall Law School and the Faculty of Environmental & Urban Change
York University

Cc: Ali Naraghi, Legal Counsel, Greenpeace Canada, ali.naraghi@greenpeace.org
Jamie Kneen, MiningWatch Canada, jamie@miningwatch.ca
Mark Calzavara, Council of Canadians, mcalzavara@canadians.org

¹ The lead author, Dr. Dayna Nadine Scott, holds a York Research Chair and is Associate Professor at Osgoode Hall Law School and the Faculty of Environmental and Urban Change at York University. She served as academic co-director of the Environmental Justice & Sustainability Clinic for the 2020-2021 academic year, and is co-coordinator of the MES/JD program. Clinic students have been assisting Neskantaga First Nation with legal research in relation to the Ring of Fire environmental/impact assessments for the past 3 years. It is in this context that our questions and concerns arise. This submission is prepared jointly with the other sponsoring organizations. Research and analysis supporting this complaint was contributed by EJSC JD students Peter Hillson and Isabel McMurray.

² Capital Markets Modernization Taskforce, "Final Report" (January 2021) at 67, online (pdf): *Government of Ontario* <<https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf>>.

³ Neskantaga and Eabametoong First Nations, "Neskantaga and Eabametoong First Nations Issue Declaration of Alliance and Shared Regulatory Territory" (9 November 2018), online: *MiningWatch Canada* <<https://miningwatch.ca/news/2018/11/9/neskantaga-and-eabametoong-first-nations-issue-declaration-alliance-and-shared>>.

⁴ Niall McGee, "Australian private-equity firm targets acquisition of Ring of Fire explorer Noront" (25 May 2021), online: *The Globe and Mail* <<https://www.theglobeandmail.com/business/industry-news/energy-and-resources/article-australian-private-equity-firm-wyloo-to-make-133-million-offer-for/>>.

⁵ Niall McGee, “Australia’s Wyloo Metals looks to spend \$25-million to study viability of battery metals processing plant in Ontario” (31 May 2021), online: *The Globe and Mail* <<https://www.theglobeandmail.com/business/article-australias-wyloo-metals-looks-to-spend-25-million-to-study-viability/>>.

⁶ Noront Resources Ltd., “Annual Report: For the Year Ended December 31, 2020” (May 2021) at 7-8, online (pdf): *Noront Resources* <<https://norontresources.com/wp-content/uploads/2021/05/2020-Annual-Report-FINAL.pdf>>. The report references agreements signed with Marten Falls First Nation and Webequie First Nation. It also references signed Memoranda of Understanding with Marten Falls First Nation and Aroland First Nation. Discussions around a Memorandum of Understanding are still ongoing with Webequie First Nation.

⁷ *Ibid* at 25.

⁸ Noront, in fact, affirms this in their MD&A dated May 27, 2021. Noront Resources Ltd., “Management Discussion & Analysis: For the Three Months Ended March 31, 2021” (27 May 2021) at 4, online (pdf): *Noront Resources* <https://norontresources.com/wp-content/uploads/2021/06/Q1-2021-Noront-Resources_MDA_FINAL.pdf>. This research is current to August 4, 2021.

⁹ Noront Resources Ltd., “Annual Information Form: For the Year Ended December 31, 2018” (15 April 2019) at 52, online (pdf): *Noront Resources* <<https://norontresources.com/wp-content/uploads/2019/04/Noront-2018-AIF-FINAL-3.pdf>>.

¹⁰ *Ibid*.

¹¹ *Ibid* at 30.

¹² Noront Resources Ltd., “Annual Information Form: For the Year Ended December 31, 2017” (17 April 2018) at 30, online (pdf): *Noront Resources* <<https://norontresources.com/wp-content/uploads/2014/10/Noront-2017-AIF.pdf>>.

¹³ Tim Groves, “First Nations oppose the Ring of Fire mining projects: Neskantaga First Nation launches court action” (6 July, 2012), online: *Toronto Media Co-Op* <<http://toronto.mediacoop.ca/story/first-nations-oppose-ring-fire-mining-projects/11622.html>>.

¹⁴ CBC News, “Monday’s Ring of Fire road announcement ‘premature’ say area First Nations” (25 August 2017) online: *CBC News: Thunder Bay* <<https://www.cbc.ca/news/canada/thunder-bay/ring-of-fire-road-premature-1.4261877>>.

¹⁵ Neskantaga and Eabametoong First Nations, *supra* note 3.

¹⁶ *Ibid*.

¹⁷ See e.g. CBC News, “Monday’s Ring of Fire road announcement ‘premature’ say area First Nations” (25 August 2017) online: *CBC News: Thunder Bay* <<https://www.cbc.ca/news/canada/thunder-bay/ring-of-fire-road-premature-1.4261877>>; Doug Diaczuk, “Neskantaga First Nation demands a halt to assessment of Ring of Fire road” (10 May 2021) online: *Thunder Bay News Watch* <<https://www.tbnewswatch.com/local-news/neskantaga-first-nation-demands-a-halt-to-assessment-of-ring-of-fire-road-3766040>>.

¹⁸ Jody Porter, “‘Cease and desist,’ Neskantaga First Nation tells Ring of Fire mining company” (17 August 2016) online: *CBC News: Thunder Bay* <<https://www.cbc.ca/news/canada/thunder-bay/noront-neskantaga-ring-of-fire-1.3723560>>.

¹⁹ Jeff Gray & Niall McGee, “Ontario, First Nations agree to study road to Ring of Fire: Construction still years away, minister says, as one group opposes plan, others call for alternate route” (2 March 2020), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-ontario-first-nations-agree-to-study-road-to-ring-of-fire/>>.

²⁰ See The Daily Press, “Mushkegowuk chiefs call for moratorium on development within Ring of Fire” (12 January 2021) online: *The Timmins Press* <<https://www.timminspress.com/news/local-news/mushkegowuk-chiefs-call-for-moratorium-on-development-within-ring-of-fire>>; See also Northern Ontario Business Staff, “Environmental opposition to Ring of Fire is Growing” (26 February 2021) online: *Elliot Lake Today* <<https://www.elliottlaketoday.com/local-news/environmental-opposition-to-the-ring-of-fire-is-growing-3460884>>; MiningWatch Canada, “Indigenous, Environmental Groups Call for Moratorium on Mining Development in Ring of Fire” (26 February 2021) online: *MiningWatch Canada* <<https://miningwatch.ca/blog/2021/2/26/indigenous-environmental-groups-call-moratorium-mining-development-ring-fire>>.

²¹ Attawapiskat, Fort Albany, and Neskantaga First Nations, “First Nations Declare Moratorium on Ring of Fire Development” (1 April 2021) online: *Cision News Wire* <<https://www.newswire.ca/news-releases/first-nations-declare-moratorium-on-ring-of-fire-development-854352559.html>>.

²² Shawn Jeffords, “Ontario rips up Ring of Fire deal with First Nations to pursue bilateral talks” (27 August 2019) online: *The Toronto Star* <<https://www.thestar.com/business/2019/08/27/ontario-rips-up-ring-of-fire-deal-with-first-nations-to-pursue-bilateral-talks.html>>.

²³ *Securities Act*, RSO 1990 c S.5.

²⁴ *YBM Magnex International Inc., Re*, 2003 CarswellOnt 2632 (WL Can) at para 91, 26 OSCB 5285, 2003 LNONOSC 337.

²⁵ *Rex Diamond Mining Corp. v Ontario (Securities Commission)*, 2010 ONSC 3926 at para 6, [2010] OJ No 3422, 191 ACWS (3d) 998.

²⁶ *Coventree Inc. Re*, 2011 CarswellOnt 9804 (WL Can) at para 369, 34 OSCB 10209, 91 BLR (4th) 108, 2011 LNONOSC 757.

²⁷ Ontario Securities Commission, “Unofficial Consolidation: Companion Policy 43-101CP Standards of Disclosure for Mineral Projects” at Section 4 (26 February 2016) online: *Ontario Securities Commission* <<https://www.osc.ca/en/securities-law/instruments-rules-policies/4/43-101/unofficial-consolidation-companion-policy-43>>.

²⁸ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [UNDRIPA]. Now that UNDRIPA has received Royal Assent, Canadian laws must be made consistent with the content of the Declaration (as per cl 5). Canada is now obligated to obtain the free and informed prior consent of Indigenous communities “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

²⁹ Shin Imai & Sarah Colgrove, “Investors are increasingly shunning mining companies that violate human rights” (22 February 2021) online: *The Conversation* <<https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702>>.

³⁰ Erika Piquero, “Most Canadian Mining Companies are Lagging When It Comes to Human Rights Reporting. Here’s Why.” (January 2019) online: *Shift* <<https://shiftproject.org/most-canadian-mining-companies-are-lagging-when-it-comes-to-human-rights-reporting-heres-why/>>.