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Citation: *Plateau Energy Metals Inc. (Re)*, 2022 ONCMT 33  
Date: 2022-11-02  
File No. 2021-16

**IN THE MATTER OF  
PLATEAU ENERGY METALS INC., ALEXANDER FRANCIS CUTHBERT HOLMES and  
PHILIP NEVILLE GIBBS**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT  
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Adjudicators:** James D.G. Douglas (chair of the panel)  
Sandra Blake  
Timothy Moseley

**Hearing:** By videoconference, November 2, 2022

**Appearances:** Brian Weingarten For Staff of the Ontario Securities  
Rikin Morzaria Commission  
Lara Jackson For Plateau Energy Metals Inc.  
John Picone  
Stephanie Voudouris  
Melissa MacKewn For Alexander Francis Cuthbert Holmes  
Dan Thomas  
James Camp For Philip Neville Gibbs  
Jamie Gibson

## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.*

- [1] Staff of the Ontario Securities Commission has alleged that, amongst other things, Plateau Energy Metals Inc. made misleading or untrue statements in news releases and filings, contrary to the *Securities Act* (the **Act**).<sup>1</sup> They further allege that Alexander Holmes authorized, permitted, or acquiesced in the contravention of the *Act* in connection with the misleading news releases, and that both Holmes and Philip Gibbs authorized, permitted, or acquiesced in the contravention in connection with the misleading filings.
- [2] Staff also alleges that Holmes acted in a manner contrary to the public interest by making selective disclosure of relevant facts to certain shareholders before Plateau had publicly disclosed those facts.
- [3] Staff and the respondents seek approval of a settlement agreement they have entered into regarding these allegations. We conclude that it would be in the public interest to approve the settlement, for the following reasons.
- [4] The factual background is set out in more detail in the settlement agreement, but we summarise the most important facts here.
- [5] Plateau Energy Metals Inc. is a mining exploration and development company that conducts its business in Peru through a wholly-owned subsidiary. Holmes was Plateau's CEO during the relevant times, and Gibbs was the part-time Chief Financial Officer.
- [6] The parties have agreed that, under Peruvian law, mining concessions are granted for an indefinite term, but holders must satisfy several obligations to maintain the concessions, including making annual payments. In 2018, there

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<sup>1</sup> RSO 1990, c S.5

was an issue with the receipt of Plateau's payment and a cancellation resolution was made against 32 of Plateau's 151 concessions in February 2019.

- [7] On March 14, 2019, Plateau filed an appeal of the cancellation resolution to the highest mining authority in Peru. On the same day, a blogger posted a detailed article about the cancellation resolution and its potential impact on Plateau's operations in Peru. The next day, March 15, 2019, the company issued a misleading news release in relation to the status of its mining concessions. Holmes participated in drafting this news release.
- [8] In the days following that news release, Holmes answered inquiries from some concerned shareholders, and in doing so, described some facts about the cancellation resolution and the company's response. Plateau had not publicly disclosed those facts, and did not do so until the end of July 2019.
- [9] Plateau issued further misleading news releases over the next several months.
- [10] In May 2019, Plateau filed its second quarter interim financial statements. Holmes and Gibbs each certified that the filing did not contain any untrue statements of a material fact or omit to state a material fact. However, the filings omitted to state the material fact that the mining rights associated with the disputed concessions had lapsed.
- [11] In July 2019, Plateau issued a news release disclosing, for the first time, its ongoing administrative issues in respect of the disputed concessions. It also informed investors that its appeal from the cancellation resolution was denied. Following the company's disclosure, Plateau's share price declined significantly.
- [12] We have reviewed the settlement agreement in detail. In addition, we had the benefit of a confidential conference with counsel for all parties.
- [13] Each of Plateau, Holmes and Gibbs has made payments to the Commission in the amounts contemplated in the Settlement Agreement, as follows:
  - a. Plateau paid \$500,000 for an administrative penalty and \$210,000 for investigation costs;
  - b. Holmes paid \$175,000 for an administrative penalty and \$60,000 for investigation costs; and

c. Gibbs paid \$75,000 for an administrative penalty and \$30,000 for investigation costs.

[14] Further, the parties advise that both Holmes and Gibbs completed a customized education course relating to disclosure obligations, which course was agreeable to Staff.

[15] Our role at this settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement.

[16] Timely, accurate and efficient disclosure is one of the fundamental principles upon which securities regulation in Ontario is founded. Misleading disclosure poses serious risks of investor harm and impairs the integrity of Ontario's capital markets. In the case of mining companies and other reporting issuers operating outside of Canada, increased vigilance is often required on the part of those responsible for making disclosure decisions. Violations of disclosure obligations are in all instances serious breaches of Ontario securities law warranting regulatory action and censure.

[17] Selective disclosure also harms investors and impairs the integrity of Ontario's capital markets. Public issuers and their representatives must ensure that relevant information is disclosed publicly and not selectively, so as to ensure fairness for all consumers of that information.

[18] The panel is satisfied that, overall, the sanctions agreed to by the parties under the settlement agreement achieve the objectives of specific and general deterrence. Moreover, the Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. In the context of settlement approval, it is not the role of this panel to substitute or impose its views as to appropriate settlement terms, but rather to ensure that the settlement is consistent with the purposes and principles articulated in sections 1.1 and 2.1 of the *Act*, which inform the public interest in this context. We are satisfied that the settlement agreement is consistent with those purposes and principles and, therefore, it is in the public interest for us to approve the settlement.

[19] We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 2nd day of November, 2022

*"James D.G. Douglas"*

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James D.G. Douglas

*"Sandra Blake"*

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Sandra Blake

*"Timothy Moseley"*

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Timothy Moseley