

# National Instrument 43-101: Who Is A Qualified Person And What Are Their Responsibilities?



Mining issuers often question who can serve as a “qualified person” (QP). The QP concept is core to National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101), as the QP is a gatekeeper ensuring that scientific and technical information has been appropriately generated and is accurately reported. The QP concept was introduced, as part of NI 43-101, after the Bre-X scandal to help ensure industry standards and best practices are followed, by ensuring someone with the proper background, knowledge and experience is involved with generating data that will be publicly disclosed related to mineral projects and is doing so pursuant to professional standards. To this end, NI 43-101 requires that all disclosure of scientific or technical information made by an issuer on a material property must be based on information prepared by or under the supervision of a QP or otherwise approved by a QP, and that the QP be named and the relationship to the issuer be disclosed in the disclosure document.

To ensure that issuers involve the right person at the right time in making their scientific and technical disclosures, it is important to understand who qualifies as a QP and the nature of their responsibilities. This article provides

information to help issuers and QPs navigate and apply these requirements.

## **WHO MAY BE A QUALIFIED PERSON?**

Under NI 43-101, a QP must be an individual who has the requisite (i) education, (ii) professional association and ethics and (iii) experience, as follows:

### **i. Education**

To be considered a QP, an individual must be an engineer or geoscientist with a university degree or equivalent accreditation, in an area of geoscience or engineering, relating to mineral exploration or mining. The definition of “qualified person” does not include engineering and geoscience technicians, engineers and geoscientists in training, and equivalent designations that restrict the individual’s scope of practice or require the individual to practise under the supervision of another professional engineer, professional geoscientist or equivalent.

### **ii. Professional Association and Ethics**

An individual must be in good standing with a professional association.

A “professional association” means a self-regulatory organization of engineers, geoscientists or both engineers and geoscientists that is:

- a. given authority or recognition by statute in a jurisdiction of Canada; or
- b. a foreign association that is generally accepted within the international mining community as a reputable professional association.

QPs are expected to act in compliance with the professional standards or competence and ethics of their professional

association. They are further expected to generally use procedures and methods that are consistent with industry best practices and standards.

A professional association must also have disciplinary powers, including the power to suspend or expel a member regardless of where the member practices or resides.

If an individual is a member of a professional association in a foreign jurisdiction, NI 43-101 provides that for an individual to qualify as a QP, the individual must have a membership designation that:

- requires attainment of a position of responsibility in their profession that requires the exercise of independent judgment; and
- requires (1) a favourable confidential peer evaluation of the individual's character, professional judgement, experience and ethical fitness, or (2) a recommendation for membership by at least two peers and demonstrated prominence or expertise in the field of mineral exploration or mining.

The regulators have indicated in the guidance that they interpret "demonstrated expertise in the field of mineral exploration or mining" to mean having at least five years of professional experience and satisfying an additional entrance requirement relating to level of responsibility. Some examples of such a requirement are: (a) at least three years in a position of responsibility where the person was depended on for significant participation and decision-making; (b) experience of a responsible nature and involving the exercise of independent judgment in at least three of those years; and (c) at least five years in a position of major responsibility, or a senior technical position of responsibility.

A list of foreign associations that the regulators consider to qualify as "professional associations" and the appropriate

membership designation to qualify as a QP is set out in the companion policy to NI 43-101.

The regulators have noted that being in “good standing” includes satisfying any related registration, licensing or similar requirements in the particular jurisdiction. Canadian provincial and territorial legislation require QPs to be registered if practising in a jurisdiction of Canada and certain provinces may require that the QP is called in that particular province as well. It is the responsibility of the QP to confirm that they are complying with any local regulations for any reports for which they are responsible.

### **iii. Experience**

A QP is required to have at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these, that is relevant to their professional degree or area of practice, PLUS experience relevant to the subject matter of the mineral project and the technical report. Determining an individual’s relevant experience is the crux of whether a particular individual should act as QP in any particular circumstance.

Whether an individual has the experience required to act as a QP will need to be determined on a case-by-case basis. Relevant experience is necessary for a QP to fulfill their responsibilities which are:

1. Complying with its professional association’s code of conduct and the guidance and standards provided by CIM.
2. Only performing work in the area of competency and being honest.
3. Conducting technical data verification by performing due diligence that is reasonable in the circumstances.
4. Communicating any material risks related to the project it is reviewing in plain language so that the issues can be clearly understood by investors.

5. Checking the issuer's disclosure to ensure the issuer has accurately reflected their findings and that they have not been misquoted.

There is guidance in the Canadian Institute of Mining, Metallurgy and Petroleum (CIM) definitions related to a QP's competence and relevant experience in the commodity, type of deposit and situation under consideration. A QP needs to be mindful of their experience and should not approve disclosure for which they lack the relevant experience.

For example, the CIM definitions provide that for a person to qualify as a QP for the estimation of mineral reserves for alluvial gold deposits, the individual would need to have relevant experience in the evaluation and extraction of such deposits. However, experience with placer deposits containing minerals other than gold may not necessarily provide the appropriate relevant experience for an alluvial gold deposit.

**Ultimately, regulators have indicated that “the qualified person should be clearly satisfied that they could face their peers and demonstrate competence and relevant experience in the commodity, type of deposit and situation under consideration.”**

QPs should not be considered interchangeable, and the onus is on an issuer to ensure that they are engaging the appropriate experts for any particular task. The consequence for not doing so can be serious. The securities regulators will require any disclosure deficiencies to be corrected by restating and re-filing documents, failing which the issuer may be: (a) placed on a default list, (b) ordered to re-file or (c) cease traded until the deficiency is rectified. Even if the deficiency is rectified, the regulators may still seek enforcement or regulatory action. Therefore, it is critical that issuers ensure they understand the requirements and qualifications when retaining a QP to ensure that the right person is hired for the job.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

Authors: [Alexander Pizale](#), [Gregory Hogan](#), [Maria Tapia](#)

Cassels Brock & Blackwell LLP