

Note: Comments from Ken Lomborg relating to CSA Consultation Paper 43-401 –  
*Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects*

The Canadian Securities Administrators has issued a Consultation Paper inviting feedback from Mining Industry Stakeholders with regard to the Canadian National Instrument 43-101, and 'several key provisions of NI 43-101, priority areas for revision, and whether regulatory changes' are necessary.

This brief deals specifically with:

- item 3. a) and b) in Section A relating to improved alignment with other mining jurisdictions globally, and
- item 16 in Section E relating to the Qualified Person Definition.

While there may be other, even multiple, alignment issues raised by SAMREC in this consultation, this brief will deal solely and specifically with the definition of a Qualified Person and how this differs substantially from the concept of the Competent Person defined for global application by CRIRSCO and elaborated by the Australian predecessor to JORC in 1972, if not before.

Alignment of the definitions for the QP and CP is seen as a similar, but perhaps a different challenge to that referred to by the CSA in its preamble to Section E. Specifically the issue of 5 years' experience. The preamble is not clear as to whether this issue relates to 5 years of mining industry experience or the specific 'relevant experience' that is a general requirement around the world.

NI43-101 rolls these three requirements of 5 years, mining industry experience ('engineer or geoscientist') and relevant experience into the definition of a QP that can arguably be interpreted in different ways. The box here presents very briefly a case study illustrating how these interpretations can, in the case of Five Star Diamonds, now Aranjin Resources, result in false information to the investor. It highlights that '5 years of relevant experience' is paramount, and thus that the current QP definition is deficient because this is not explicitly included in the definition. Solving this dilemma may provide the basis for the evidence based abuse highlighted by the CSA.

*Five Star Diamonds Ltd completed a Canadian CPC transaction in 2016 and filed on [www.Sedar.com](http://www.Sedar.com) a Technical Report on their Catalao diamond project in Brazil in support of the transaction in early 2017. Corporate changes since this date mean the report must be found today under Aranjin Resources Ltd.*

*A review of this report revealed numerous serious technical flaws that were discussed in a presentation to the SAMCODES 2021 conference. The QP was an Australian geologist registered with AIG. While a review of his Certificate in the report showed 20 years of industry experience as a geologist in several roles and for multiple minerals, his claimed diamond experience did not seem to stand up to scrutiny for the JORC requirement of 'five years relevant experience.' This is an AIG requirement regardless of whether the report may be for a different jurisdiction with a contrary threshold to 'competence.'*

*A complaint to the AIG revealed two substantive outcomes:*

- 1. AIG recognised the lack of diamond experience and wrote to the QP/CP with words expressing 'reservations about the reporting'. In other words, the report author was not recognised as having five years of relevant experience to be a CP under JORC.*
- 2. Craig Waldie of the OSC outlined his interpretation of the difference between a QP and a CP but made no reference to the most important issue of 5 years relevant experience. Thus, the work of a not so competent CP was accepted as qualified for QP status.*

*Why is all this so important?*

*The Catalao Technical Report had many faults that even a cursory review should have recognised. The two most egregious were:*

- *The application of a moisture content to factor a dry grade. A moisture content of 35% was estimated by a flawed methodology: the resulting dry grade was double what it should have been.*
- *A 44.4 carat subset of the actual 169.5 recovered carats was valued without consideration for Representivity. This breaks the basic rules for diamond resource estimation.*

The second box provides a little insight into the origins of the CIM Definition Standards and NI43-101 that may help explain why the initial explicit stated alignment with JORC in the 1998 draft proposal for the first National Instrument 43-101 was subsequently changed in a substantive manner with regard to the definition of the QP, and later issued in 2001.

*Does the history of the first CIM Definition Standards in 2000, and the first NI43-101 in 2001 reveal an explanation for why the present definition is what it is?*

*A Notice of Proposed National Instrument 43-101 and Companion Policy 43-101CP was published on July 3, 1998. This was the draft original for public comment. It contained the definition of a QP thus:*

- (a) an individual who is an engineer or geoscientist with at least five years of experience in mineral exploration, development or production activities and assessment, or any combination of these, including experience and technical responsibility appropriate to the particular mining project and who is a member in good standing of a professional association; and ...*

*A footnote included in this first NI43-101 document explained that:*

*The requirement for technical experience has been increased from three years to five years and otherwise revised to conform to the concept of "Competent Person" in the Australasian Code for Reporting of Identified Mineral Reserves and Ore Reserves released in July 1996 by a Joint Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia (the "Australasian Code").*

*The CIM Definition Standards 20 August 2000 was the original such document. It defined a QP thus:*

*A "Qualified Person" means an individual who is an engineer or geoscientist with at least five years of experience in mineral exploration, mine development, production activities and project assessment, or any combination thereof, including experience relevant to the subject matter of the project or report and is a member in good standing of a Self-Regulating Organization.*

*The first and original NI43-101 issued on 1 February 2001 defined the QP thus:*

*"qualified person" means an individual who*

*(a) is an engineer or geoscientist with at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these;*

*(b) has experience relevant to the subject matter of the mineral project and the technical report; and*

*(c) is a member in good standing of a professional association;*

## **Commentary on meaning**

Note that by reformatting the QP definition in the first NI43-101 using bullet points and deleting the word 'including', the NI43-101 definition in 2001 is fundamentally changed from the original 1998 review document.

In contrast the CIM Definition Standards issued in 2000, earlier than the first NI43-101, is largely synonymous with other codes, especially with regard to the retention of the word 'including.'

It is not clear how this fundamental change came about. It may be as simple as the result of an editorial process that reformatted using bullet points rather than the original text as an extended sentence with phrases separated by commas. When the CIM Definition Standards 'caught up' in its first revision in 2004; the three key phrases were not shown as bullet points, but the punctuation was changed using semi-colons in the key locations, thus making the meaning essentially identical to NI43-101. The word 'including' was also omitted, fundamentally altering the overall meaning.

The definition has retained the essence of the 2001 version over the years with minor subtle changes to clarify and specify meaning.

### **Where does this leave alignment between jurisdictions?**

It has created a serious but presumably unintended inconsistency between Canadian Code and the rest of the global CRIRSCO Codes wherein the '5 years of relevant experience' (underline added for emphasis) follows the JORC tradition dating back to 1996 and earlier. This inconsistency has been shown here to have serious consequences; it may also be a significant contributing factor in the CSA concern for evidence of unqualified engineers and geoscientists claiming QP status.

### **Is there a 'win-win' solution?**

CSA has highlighted the fact of 'an increase of practitioners with less than five years of experience' as being of growing concern, and requiring review in this consultation. This brief has highlighted the same concern but more specifically emphasising that a problem lies with the absence of the CRIRSCO concept of 'a minimum five years of relevant experience' that was swept aside in a formatting change in 2001.

It can also be emphasised that 'five years of relevant experience' also means five years of mining industry experience, whereas five years of mining industry experience does not necessarily mean 'five years of relevant experience.'

Fixing this concern or dilemma will surely solve the two CSA objectives to review the QP definition in regard to the use of the phrase '5 years', and to promote 'greater alignment' with 'other influential mining jurisdictions.' Two birds with one stone!

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