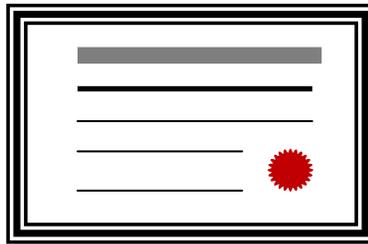


# **Use of Qualified Persons in the Natural Resource Sector**



## **Proposed Next Steps**

Prepared by

Qualified Persons Cross-Ministry Working Group

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# 1 Background

The agencies that regulate the use of natural resources (NRS agencies) in British Columbia are working together to improve the effectiveness and efficiency of natural resource administration. The use of qualified persons (QPs) is one approach that can be used to achieve this objective.

In June, 2011, a Professional Reliance Cross-Ministry Working Group (working group) was formed to support and coordinate the advancement of the use of qualified professionals and persons (QPs) across natural resource sectors. This group includes staff from the Ministries of Forests, Lands and Natural Resource Operations; Environment; Energy, Mines and Natural Gas; Aboriginal Relations and Reconciliation; Transportation and Infrastructure; Environmental Assessment Office; and the Oil and Gas Commission. In December 2011, the Natural Resources Board endorsed the Terms of Reference for the working group, and confirmed Doug Konkin, Chair of the Natural Resources Board as Executive Sponsor for the project.

The terms of reference for the working group include the following objectives:

- To achieve a common understanding across ministries of the potential, and limitations of, the use of qualified professionals and persons in the regulation of natural resource use.
- To establish a common framework to guide developmental work for the use of QPs across the natural resource sector.
- To engage and work with professional associations and external stakeholders at a strategic level.
- To clarify the expectations and needs of government, industry proponents, and the various professional associations with regard to increasing professional reliance.
- To identify common needs and challenges among independent initiatives.
- To coordinate activities where appropriate.

The working group was tasked to deliver:

- An updated inventory of the existing use of QPs.
- A strategy for engaging external stakeholders.
- A criteria and risk assessment matrix tool to guide users in identifying where the use of QPs is appropriate.
- A report identifying:
  - mechanisms for using or requiring use of QPs (e.g. statutes, policies, certification, contracting requirements) appropriate internal and external structures/organizations for certification, setting standards, and holding professionals and QPs accountable (e.g. professional associations, certifying bodies, rosters),
  - Mechanisms to assess the benefits and effectiveness of employing and relying on QPs, including clear standards/guidelines/protocols to measure and compare performance.
  - Monitoring and audit systems to periodically to check compliance with required statutes, policies, competencies, and standards, and effectiveness of the professional reliance model.
  - Implications for NR sector compliance and enforcement framework
- Recommendations and implementation plan(s).

## 2 Project Approach

### 2.1 Scope

While initially formed to look at professional reliance, the working group noted that there were many examples in the natural resource sector of licensed or permitted persons who were relied upon to carry out work to an acceptable standard, and that many of these persons were not professionals. The working group felt that this group, referred to as accredited practitioners, should be included in the scope of the project in order to provide the Province with the greatest range of options to support administrative efficiencies, and effective resource management. To reflect this broader scope, the working group renamed itself the “Qualified Persons Cross-Ministry Working Group”.

The working group also considered the range of roles that QPs could play in natural resource management, within and outside of government, and determined that the objectives of the project were best served by focusing on the use of QPs hired by resource users, and who played a role in the application for, evaluation, or conduct of, natural resource authorizations.

### 2.2 Terminology

“Qualified person” (QP) is a person who has training and expertise in a discipline, and who has been through a process that evaluates their qualifications and confirms them as competent to perform work in their area of expertise. The evaluation process may be carried out by a professional association, the provincial government, or another type of organization. “Qualified person” is a generic term that includes self-regulating professionals, and accredited practitioners.

For the purpose of this project, the term “resource user” includes authorization holders, and proponents who seek an authorization.

### 2.3 Strategy

In reviewing the project objectives, deliverables and timelines, the working group viewed that the deliverables all contributed to the development of an overall framework to guide the use of QPs in natural resource administration, one of the project objectives. The development of this common framework became the central focus of the project and most other objectives were achieved commensurate with, and as a result of, development of the framework.

For ease and flexibility in accomplishing the work, the individual deliverables, or topic areas within deliverables were completed separately as stand-alone sub-projects (focus projects), each with their own report. The learnings, however, were drawn together to develop the framework.

The focus projects conducted were:

- Competency and Accountability
- Mechanisms
- Opportunity Assessment
- Benefits and Effectiveness

- Compliance Verification
- Update of the QP inventory
- Framework for the Use of Qualified Persons

Draft products of these focus project were made available for staff and stakeholder review. Final versions of these reports will be made available as they are completed, likely near the end of May 2013.

### 3 Framework for the Use of Qualified Persons

The draft framework developed by the working group, in consultation with stakeholders, consists of two main parts. The first part is a set of three “essential components” that must be in place to have an effective QP model. The second part is an implementation cycle to guide specific uses of QPs, to test effectiveness and efficiency through business applications, and to support continuous improvement.

#### 3.1 Essential Components

The essential components are

1. **Guidance** for QPs to enable them to complete work that fulfills the obligations of resource users and meets the expectations of government.
2. **Competency**, in that the QP has adequate knowledge and experience in the work being done, and is certified as competent by a governing body.
3. **Accountability**, in that there is a system in place to ensure that:
  - QPs are accountable to their employers, clients, governing bodies, and the public where required by their association or statute.
  - resource users are accountable to government
  - legislated QP associations are accountable to government and the public
  - government is accountable to the public.

Together, these three components provide a solid foundation for the effective use of QPs. Each of these three components can be implemented in a variety of ways, resulting in a number of different combinations, each representing a different QP model.

#### 3.2 Implementation Cycle

The implementation of the QP framework is based on a “Plan-Do-Check-Adjust” cycle, an iterative four-step management method used in business for the control and continuous improvement of processes and products. This cycle includes the actions and considerations that apply at each stage, and is intended to be applied at the authorization level. For example, the “Plan” stage includes conducting an assessment of the risks associated with the activity, and an evaluation of the costs and benefits, and outcomes that can be expected to result from the use of QPs in the role proposed. It is at this stage that staff would assess what guidance is needed for the QPs, and what is required to ensure appropriate levels of competency and accountability. Staff would also consider what mechanisms for requiring or supporting the QP use would be appropriate.

At the “Do” stage, there would be a clear understanding of roles and responsibilities of staff and QPs carrying out their respective tasks. At the “Check” stage, the effectiveness evaluation metrics would be

applied to determine if the QP use has been effective in obtaining beneficial outcomes, avoiding negative ones and whether mechanisms are in place to effectively address any issues.

At the “Adjust” stage, staff and stakeholders involved in the use should determine the causes of discrepancies between the outcomes achieved and what was expected, and take corrective action to improve the process in future.

## **4 Feedback on the Framework**

Feedback on the framework was gathered at two workshops. One was held in March 2012, with government staff, professional associations and resource user associations, and one was held in November 2012, with, professional associations, resource user associations, QP consulting associations, and public interest non-government stakeholders.

### **4.1 Issues and Concerns Raised**

A number of issues and concerns were raised by staff and stakeholders at several points in the project. Some of the main ones are:

- Resource users are concerned about the potential downloading of costs to them, of hiring and training QPs, and about potential operational delays.
- Resource users are concerned about the potential lack of redress for them if damage occurs as a result of reliance on a QP. The only avenue currently available is through the courts, which is an onerous route for smaller tenure holders.
- Government staff and public interest stakeholders are concerned about the potential costs to the public to remediate land and resources where unacceptable impacts are the result of QP advice, and the resource user was duly diligent.
- Government staff and public interest stakeholders view the QP initiative as an offloading of stewardship responsibilities from government to QPs and resource users.
- Government staff and public interest stakeholders perceive a conflict of interest in QPs working for resource users.
- Government staff who review QP work have at times received work they perceived to be inadequate, and so are cautious about increased reliance on QPs.
- Government staff are concerned that they will lose their jobs to external QPs.
- QPs are concerned about what their liability will be in new models.

November workshop participants viewed that the framework is incomplete, and that many questions were unanswered. The essential components of competency, accountability and guidance were, however, supported as important components of a framework. All parties wanted evidence that QP use can produce the intended benefits, and a better understanding of the likely costs, and other implications, before they are willing to embrace broader use of QPs.

## 4.2 Addressing the concerns

Many of the questions that participants posed about the use of QPs and the framework cannot satisfactorily be answered at the conceptual, NR-sector level of the framework. It is necessary to examine many of the issues in the context of a specific authorization or activity, through the lens of the essential components and the implementation cycle. Participants suggested that case studies and pilot projects could serve this purpose. As questions are answered, the information may be found to be applicable across the sector, and included in the framework, useful for like applications, or case-specific. In the first two instances, the answers should feed back into the framework, and in the latter case, the learnings should be made available to others.

Participants wanted to see that the use of QPs can be beneficial for government, resource users and the public, and expressed concerns with some existing models. The working group felt that these issues could be addressed within the context of case studies, though an examination of costs, benefits, and effectiveness of the selected QP use.

The QP governing bodies have a strong role to play in ensuring that QPs are competent in their area of practice, and addressing performance issues. Continuing to work with professional associations on matters of competency and accountability can help address this issue. Government also has a role to play in supporting QPs to do good work by ensuring that there is adequate guidance for QPs, including clarifying, where necessary, what the public interest is in a given situation, so that the QP can work to uphold it.

Government has a role to play in the accountability component as well, in ensuring that it is providing the appropriate level of oversight of QP models, and reporting out to the public on findings. Case studies will show how this is currently supported.

Government staff have a strong role to play in shaping and supporting effective QP models. Where external QP work is submitted to government for review, it is important that both parties are clear on their roles and responsibilities.

While some questions may be answered through the case studies, the working group feels it is unlikely that all questions can be answered in this way, or that all business areas in the natural resource sector will wish to wait a year or more for the answers before pursuing an identified QP opportunity. To address this, the working group feels that the preparation, with staff and stakeholders, of a preliminary (or interim) implementation guide, could serve in the short term to ensure that matters of concern are considered. This guide could also be used for pilot projects.

## 5 Proposed Next Steps

Given the concerns raised, and suggestions made by participants throughout the project, and in particular at the November workshop, the Qualified Persons Cross-Ministry Working Group felt that the

following next steps were the best actions to both address the concerns raised and further the objectives of the QP project.

The recommendations for moving forward are organized by the objectives stated in the working group terms of reference.

## 5.1 Achieve a common understanding

Project objective: Achieve a common understanding across ministries of the potential, and limitations of, the use of qualified professionals and persons in the regulation of natural resource use.

- Learn from case studies
  - Work with staff and stakeholders to develop a template for the case studies and suggest examples.
  - Include examples where QPs are making decisions in lieu of government approvals.
  - Use examples to illustrate the framework.
  - Show costs, benefits, and results.
  - Evaluate the effectiveness of the model.
  - Where problems exist with the model, identify mechanisms by which these could be resolved.
  - Present success stories, and also models that are experiencing challenges, relating issues or causal factors to the framework.
  - Capture and share learnings.
- Present a few “typical” models for reference and possible use in activities with similar parameters.
- Share the lessons learned.

## 5.2 Establish a common framework

Project objective: Establish a common framework to guide developmental work for the use of QPs across the natural resource sector.

- Prepare an implementation guide for staff, to guide the use of QPs. This will be based on the work already completed.
- Use pilot projects to test the application of the framework, share lessons learned to build and improve the framework.
  - Work with industry, QPs and SDMs to identify potential pilots.
  - Prepare a guidance document for establishing, implementing and reporting out on pilots.
- Develop a cost/benefit analysis to apply to a QP model to better understand the benefits and costs for industry and government.
- Develop the framework further:
  - Provide guidance as to appropriate assignment of accountability and liability between resource users, QPs and government.
  - Ensure that QPs have adequate and current guidance. Identify and address gaps in objectives, standards, methodology, best practices, etc.

- Ensure that the Province is supporting its accountability role through effectiveness evaluations and audits for a variety of QP models, including QP-supported work in lieu of authorizations.
- Develop guidance for when the use of a QP roster is appropriate.

### **5.3 Work with stakeholders at a strategic level.**

Project objective: Engage and work with professional associations and external stakeholders at a strategic level.

- Continue to work with professional associations, industry associations and public interest stakeholders to develop the framework, to discuss concerns, and to address issues.
- Work with professional associations to establish consensus on a path forward, in respect of the suggestions received by the working group for actions related to competency and accountability.

### **5.4 Clarify expectations and needs**

Project objective: Clarify the expectations and needs of government, industry proponents, and the various professional associations with regard to increasing professional reliance.

- Work with staff and stakeholders to prepare a set of principles to guide the development and implementation of the framework.
- Identify the desired future state and the steps and actions of all parties that are needed to reach it.

### **5.5 Identify common needs and challenges**

Project objectives: Identify common needs and challenges among independent initiatives, and coordinate activities where appropriate.

- Establish a provincial coordinator and regional contacts to initiate, track and share information from case studies and pilot projects, and to support the Plan-Do-Check-Adjust cycle.

## **6 Implementing the Proposed Next Steps**

The working group will meet with interested parties to confirm support for any or all of these next steps, and to determine interest in working together on the proposed activities, identifying leads for activities and determining necessary resources.