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# **Certificate of Authorization Requirements: An Information Guide**

Through the *Professional Engineers Act*, Professional Engineers Ontario governs licence and certificate holders and regulates professional engineering in Ontario to serve and protect the public.

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# Certificate of Authorization Requirements: An Information Guide

Professional Engineers Ontario is responsible through the *Professional Engineers Act* for licensing professional engineers, maintaining professional standards and setting codes of professional conduct and ethics that guide engineers in their relations with the public, employers, clients and other engineers.

This guide is designed to assist you in determining whether you or your business are required to hold a Certificate of Authorization (C of A) under the *Professional Engineers Act*.

## What is a Certificate of Authorization (C of A)?

Section 12(2) of the *Professional Engineers Act* states:

“No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization.”

A Certificate of Authorization is issued by Professional Engineers Ontario (PEO) to allow individuals and business entities to *offer and provide* professional engineering services to *the public*, as distinct from a licence issued to individuals to practise professional engineering.

## Are you practising professional engineering?

The practice of professional engineering is defined in section 1 of the *Professional Engineers Act* and comprises three tests. Professional engineering is:

1. any act of designing, composing, evaluating, advising, reporting, directing or supervising, or the managing of any of these acts;
2. wherein the safeguarding of life, health, property, economic interests, the public welfare or the environment is concerned, and
3. that requires the application of engineering principles.

If what you do meets all three tests, you are practising professional engineering and must be licensed by the association.

## Are you providing professional engineering services to the public?

An examination of your practice will help you to ascertain whether you are offering or providing engineering services to the public. The public is usually legally defined as any person or entity with whom you have an arm’s-length relationship. For example:

- If you “hang out your shingle,” advertise and promote yourself—either personally or through a legal entity such as a company or partnership—as offering professional engineering services, a C of A is required.
- If you provide professional engineering services to the public through the sale of a product that is custom-designed or an original (as opposed to an off-the-shelf product), a C of A is required.
- If you work for others, but offer professional engineering services directly to the public on a part-time, moonlighting, or volunteer basis, you must hold a C of A. Under these circumstances, you must also inform your employer that you are undertaking such work, so as to avoid potential conflicts of interest. In addition, you should provide your client with a written statement of the nature of your status as an employee and the attendant limitations on your services to the client.

In short, if you are practising professional engineering and engaging in the business of offering or providing those services to anyone but yourself or your employer, you require a C of A.

In recent years, firms have increasingly secured engineering staff through a contract of service. But you may still be an employee for the purposes of licensure and thus not require a Certificate of Authorization if:

- you work exclusively for a particular firm;
- your employment contract addresses non-disclosure, ability to control work hours and time off, expectations related to performance, notice, termination and remuneration;
- your expenses are reimbursed;
- you are paid a salary or wage;
- you are provided an office and equipment on business premises;
- you have set work hours;
- you are provided benefits, e.g. vacation pay;
- your work is covered under the firm’s professional liability insurance policy.

However, if the firm requiring your engineering expertise offers a contract *for* service, a Certificate of Authorization will likely be required. You are likely working under a contract for service and would thus require a C of A if:

- your contract indicates an independent relationship, or the firm purchases your time from an agency;
- you are free to provide your services to more than one firm;
- you invoice the business for your time;
- you are not paid if services are not performed;
- you are not covered by the firm’s professional liability insurance;
- you are not restricted as to hours of work;
- you receive no vacation pay or bonuses.

### What are the requirements for a Certificate of Authorization?

Paragraph (1) of section 47 of Regulation 941 made under the *Professional Engineers Act* requires that an applicant for a C of A designate at least one of the following people in the firm to assume professional responsibility for the services provided: a professional engineer, a temporary licence holder, a limited engineering licensee, or a licensed engineering technologist (LET) who has met the experience requirement of section 46(1)2 of O. Reg. 941/90 (if the application for the limited licence was made on or after the July 1, 2015).

#### Note:

- A limited engineering licensee (LEL) may not assume responsibility for the services provided and devote sufficient time and provide personal supervision and direction to the work of the applicant that is within the practice of professional engineering, unless the LEL’s application for the limited licence was made on or after July 1, 2015.
- LELs whose application for the limited licence was made before July 1, 2015 are not eligible to assume responsibility, unless they reapply for a new LEL and are subsequently authorized to be listed to assume responsibility under a C of A.

#### Note:

- An applicant who, in addition to meeting the requirement for a limited licence set out in section 46, demonstrates that he or she is a member in good standing of the Ontario Association of Certified Engineering Technicians and Technologists and holds the certified

engineering technologist (C.E.T.) title is issued an engineering technologist class of limited licence and may use the following title and abbreviation in the practice of professional engineering:

1. “licensed engineering technologist”;
2. “LET”.

### What are the consequences of offering engineering services without a C of A?

If you operate without a C of A, you are contravening the *Professional Engineers Act*. Such contraventions may result in PEO enforcing the provisions of section 40 of the Act against you, which can lead to fines of up to \$25,000 for a first offence and up to \$50,000 for any subsequent offence. In addition, a complaint may be pursued through the association’s discipline process against licence holders who operate without a C of A (see section 72(g) of Regulation 941).

PEO has guidelines and publications dealing with areas of interest to C of A holders. An order form has been enclosed for your use or is available from PEO’s website.

### Professional liability insurance

Regulations with respect to professional liability insurance are contained in O. Reg. 941 made under the *Professional Engineers Act*.

C of A holders are required to carry professional liability insurance as laid out in the regulations under the *Professional Engineers Act*. In the absence of insurance, they are required to disclose to each and every client that they do not hold liability insurance, and obtain the client’s written acknowledgment of this disclosure.

Your firm is obliged to certify each time its Certificate of Authorization is renewed that one of the options listed in section 74(2) of Regulation 941 applies. The Certificate of Authorization application form makes this certification simple for you: just check off one of five boxes.

#### Section 74 of Regulation 941

74. (1) Subject to subsection (2), a holder of a certificate of authorization must be insured against professional liability under a policy of professional liability insurance which complies with the following minimum requirements:
1. A policy limit for each single claim of not less than \$250,000 and either an aggregate

- policy limit for all claims of not less than \$500,000 per year or an automatic policy limit reinstatement feature.
2. A maximum deductible amount under the policy of the greater of \$5,000 or 5 per cent of the annual fees the holder billed in the twelve months immediately before the issuance of the policy.
  3. Coverage for liability for errors, omissions and negligent acts arising out of the performance of all services within the practice of professional engineering offered or provided by the insured subject to such exclusions and conditions and otherwise on such terms as are consistent with the normal insurance industry practice from time to time.
  4. A provision that neither party may cancel or amend the policy of insurance in a way that results in non-compliance with this Regulation without first giving the other party at least forty-five days written notice or, in the event of nonpayment of premiums, fifteen days written notice.
  5. The insurance must be placed with an insurer with an aggregate capital and surplus of at least \$20,000,000 or an underwriter or syndicate of underwriters operating on the plan known as Lloyds. O.Reg. 72/89, s. 2, part; O.Reg. 73/90, s. 6.
- (2) A holder of a certificate of authorization is not required to be insured against professional liability under subsection (1) if,
- (a) the holder is participating in the Indemnity Plan of the Ontario Association of Architects and the holder's practice is limited to professional activities covered by that Plan;
  - (b) substantially all claims arising out of the service performed within the practice of professional engineering would be covered by other insurance whose terms of coverage are not materially less than the minimum requirements under subsection (1);
  - (c) the professional liability insurance would be in respect of pollution hazards, nuclear hazards, aviation hazards or shipping hazards; or
  - (d) before entering into an agreement to provide professional engineering services, the holder notifies each person to whom the holder intends to provide professional engineering services that the holder is not insured in accordance with the minimum requirements of this section and receives from each such person written authority to provide those services without that insurance.
- (3) The notice under clause (2)(d) shall be in the form provided by the Association for the purpose, and shall be signed by,
- (a) in the case of a holder who is a natural person, the person;
  - (b) in the case of a holder that is a corporation, an officer or director of the corporation;
  - (c) in the case of a holder that is a partnership, a partner in the partnership; or
  - (d) in the case of a holder that is a partnership of corporations, an officer or director of a partner in the partnership.

Section 74 provides in subsection (1) a minimum requirement for professional liability insurance for Certificate of Authorization holders that must obtain coverage. Insurers operating in Ontario will issue policies in accordance with the requirements. The annual fees noted in subsection 74(1)2 are considered to be gross annual fees from professional engineering services only.

Subsection (2) lists under (a), (b) and (c) classes of Certificate of Authorization holders that do not require insurance in accordance with subsection (1). Part (b) refers to Certificate of Authorization holders who already have alternative liability coverage in place, such as product liability insurance. Part (c) refers to Certificate of Authorization holders whose type of business is uninsurable. If you are unsure whether part (c) applies to your business, it likely does not.

In addition, part (d) authorizes a compulsory disclosure option, which allows a Certificate of Authorization holder not to be insured, provided this fact is communicated to and acknowledged by each and every client prior to the C of A holder undertaking any professional engineering service for that client. This option was originally intended to be:

- a transitory device; and
- a safety net for the profession in the event that insurance

providers ceased to offer such insurance policies (a situation that had occurred previously).

Although there are still some firms (mostly small) using this alternative (evidently having clients that do not mind signing back the Disclosure Notice), you should remember that as your business and your clientele grow, you will have much more to lose if a claim is made against you. An action as seemingly innocuous as failing to deliver designs on time could subject your firm to a claim for damages.

### Insurance brokers

If you find it difficult to identify an insurance broker familiar with your requirements, please visit the PEO website, where a list of insurers is published. **Note:** PEO does not endorse any insurance providers for professional liability insurance.

Please provide a copy of the current Certificate of Insurance for any professional liability or other insurance policy you hold in compliance with section 74, if applicable.

### Disclosure notice

A holder of a certificate of authorization is not required to be insured against professional liability if, before entering into an agreement to provide professional engineering services, the holder notifies each person to whom the holder intends to provide professional engineering services that the holder is not insured in accordance with the minimum requirements of this section and receives from each such person written authority to provide these services without that insurance. R.R.O. 1990, Reg. 941, s. 74(2)(d).

The disclosure notice prescribed for the purposes of clause 74(2)(d) is available from PEO's website at [www.peo.on.ca](http://www.peo.on.ca). It may be downloaded and signed by one of the authorized people listed in section 74(3) of Regulation 941:

- the person, if the C of A is held by an individual;
- an officer or director of the corporation, if the C of A is held by a corporation;
- a partner, if the C of A is held by a partnership; or
- an officer or director of one of the partner corporations, if the C of A is held by a partnership of corporations.

### Advertising

Section 75 of Ontario Regulation 941 states:

“A Member or holder of a temporary licence, a provisional licence, a limited licence or a certificate of authorization may advertise only,

- (a) in a professional and dignified manner;
- (b) in a factual manner without exaggeration;
- (c) in a manner that does not directly or indirectly criticize a Member or holder or an employer of a Member or holder; and
- (d) without reference to or use of the professional seal of the Member or holder or the seal of the Association. R.R.O. 1990, Reg. 941, s. 75; O. Reg. 13/03, s. 20.”

Advertising may be considered inappropriate if it:

- claims a greater degree or extent of responsibility for a specified project or projects than is a fact;
- fails to give appropriate indications of cooperation by associated firms or individuals involved in specified projects;
- implies, by word or pictures, engineering responsibility for a proprietary product or equipment design;
- denigrates or belittles another professional's projects, firms or individuals;
- exaggerates claims as to the performance of the project; or
- illustrates portions of the project for which the advertiser has no responsibility, without appropriate disclaimer, thus implying greater responsibility than is true.

A company may not advertise its services as “Engineers,” unless it holds a current Certificate of Authorization, in accordance with the *Professional Engineers Act*. This includes advertising in any Ontario Yellow Page Directory.

To advertise as “Consulting Engineers”, including advertising in the Ontario Yellow Pages, a Certificate of Authorization holder must receive prior authorization from PEO Council (see section 68 of O.Reg. 941), and must employ a designated consulting engineer.

Please visit PEO's website to obtain information and the application forms *Designation as a Consulting Engineer* and *Permission to Use the Designation Consulting Engineers*.

### Notice of changes

Under section 50.1 of Regulation 941, the holder of a Certificate of Authorization must notify PEO within 30 days of any change to the information submitted to PEO in the application form or the renewal form for a Certificate of Authorization, including changes in personnel listed in section F.

