

# Advisory Notice—March 25, 2020

## Obligations and responsibilities of professional engineers and holders of limited licences during the COVID-19 pandemic

As of 11:59 p.m. on March 24, 2020, all non-essential workplaces in the Province of Ontario were required to close. The provincial government has released a list of workplaces it currently deems to be essential (available at <https://www.ontario.ca/page/list-essential-workplaces>). Work may continue in these workplaces, until further notified by the government, provided it is done safely and with due regard to social distancing and other measures to avoid transmission of the virus.

Offices that provide professional engineering services are among those considered essential. In addition, engineers are employed or provide services in a number of other essential workplaces, including construction sites, mines, manufacturing plants and utilities.

PEO recognizes that practitioners will have questions or concerns about carrying out work in any workplace, even one considered essential. We offer the following *general* information to assist professional engineers in making decisions about how they should proceed. Obviously, each individual situation is different and expert advice should be obtained from health, governmental and legal authorities as needed.

### Professional engineers employed in essential workplaces

Professional engineers employed in any of the workplaces included in the government's list of exceptions to the closure order may be asked by their employers or clients to continue working. To the extent that is safe and feasible, practitioners are expected to fulfill their professional duties in accordance with the *Professional Engineers Act*, the regulations under the act and, in particular, the Code of Ethics. Like all employees, professional engineers are entitled to a safe and healthy workplace and have the right to refuse work that is unsafe. Engineers with concerns about their safety should consult with management, with a Joint Health and Safety Committee (if there is one), or with the Ontario Ministry of Labour, which administers the *Occupational Health and Safety Act*.

### Contractual requirements and obligations

Professional engineers providing services to clients in essential workplaces are generally bound by either contract or common law to continue to provide those services. However, many contracts have a *force majeure* clause that may be invoked if practitioners have concerns about continuing to provide services in that workplace at this time. There is also the common law doctrine of frustration, which may apply in some circumstances if it becomes impossible for one or both parties to fulfill their contractual obligations. As with any situation involving the interpretation of responsibilities and obligations of contracted professional services, practitioners are strongly advised to seek legal advice before taking actions that might potentially be prejudicial.



Professional engineers should assess the particulars of each project considering the most current public health guidelines and directions. If, based on evolving circumstances, changes to the scope of service are warranted, engineers should discuss these with their clients and ensure that they are documented in writing before implementing. For further information about relations between professional engineers and their clients, see the *Professional Engineering Practice* guideline, available at [https://www.peo.on.ca/sites/default/files/2019-11/ProfessionalEngineeringPracticeGuideline\\_0.pdf](https://www.peo.on.ca/sites/default/files/2019-11/ProfessionalEngineeringPracticeGuideline_0.pdf).

## Specific work practices

### *General Review of Construction*

General review is a requirement stipulated in the Ontario Building Code. For projects where a general review commitment form has been signed, the practitioners who signed the form are legally obligated to provide the review while construction on such projects continues.

Practitioners providing general review have a responsibility to perform general review according to the professional standards given in O. Reg. 260/08. No substitute procedures can be implemented. Hence an engineer *cannot* rely on pictures or videos provided by a client in lieu of a personal inspection of the work in question.

Some practitioners have been asked by their clients to perform building inspections in lieu of inspections provided by the municipality. Since professional engineers are not representatives of the administrative authority responsible for the Building Code (typically, the municipal building department), they cannot carry out the mandatory building inspections. A professional engineer cannot issue orders to comply if building code infractions are observed.

Practitioners may wish to remind clients and contractors that, if they choose to proceed with construction and conceal work that requires inspection by the building inspector, they do so at their own risk. A building inspector may, at some future date, require the work to be exposed so that it can be inspected.

### *Environmental Services*

The list released by the government specifically identifies as essential “businesses that support environmental management/monitoring and spill clean-up and response, including environmental consulting firms [and] professional engineers.” Professional engineers who provide these services to clients should refer to the section on contractual requirements and obligations in this advisory.

### *Other Essential Services Involving Engineers*

Engineers will be involved in other business activities deemed essential. These may include hospital construction (where again, a General Review will be required), and the manufacturing of face masks, ventilators and other medical equipment. In each instance, practitioners should consider what tasks they can perform safely and thoroughly.



### ***Remote Work***

To the extent permitted by the circumstances, and within the scope of the Code of Ethics, practitioners are encouraged to work remotely. Seals can be affixed electronically as described in the *Use of the Professional Engineer's Seal* guideline, available at:

<https://www.peo.on.ca/sites/default/files/2019-07/Use%20of%20Professional%20Engineer%27s%20Seal.pdf>)

### **Summary**

Engineers are expected to consult medical and legal advisors, as required, in order to ascertain whether work is indeed part of an essential business, whether their own safety is assured, and whether there are contractual or other legal obligations that must be considered in specific circumstances. The information provided herein is only general advice. Practitioners should also be mindful that the COVID-19 pandemic is a constantly evolving situation. It is important to frequently check public health and other advisories posted on the Ontario government's website to remain current on what constitutes an essential service and to stay current on health and safety measures that may impact on the practice of professional engineering.

If you have any questions, you can reach us by email at [practice-standards@peo.on.ca](mailto:practice-standards@peo.on.ca).