

## HOW PRACTITIONERS CAN MANAGE LIABILITY RISKS

By Aun Japanwala and Tasmeea Islam

Engineering projects can be complex, challenging and difficult to manage. Whether professional engineers are designing a small storefront, a new transportation hub or parts for a washing machine, the pressure—and the potential for errors—is high. Regardless of who's at fault when an error does occur, society is quick to point the finger. How can practitioners protect themselves?

Under section 74(1) of Regulation 941 under the *Professional Engineers Act*, holders of a certificate of authorization (C of A) are required, with few exceptions, to have professional liability insurance to cover claims related to the delivery of professional services. Typically, employee engineers working for C of A holders that have professional liability insurance are covered under their employer's policy. However, engineers working for these firms—especially if they are named on the C of A as responsible for the engineering services—should review their exposure to liability with the firm's insurer. Additionally, employee engineers should check with their employer's insurance company to see if they are covered for professional negligence or errors and omissions.

### WHAT ARE THE BIGGEST RISKS?

Some of the liability risks faced by practitioners can involve clients claiming the engineer made a mistake, accusing the engineer of negligence or naming the engineer in a lawsuit. According to claims data from Victor Insurance, 52 per cent of claims against engineers and architects are due to design error allegations. Additionally, if disruptions in performance, scheduling or pricing of an engineering project are unaccounted for under the existing terms of the contract, and if the client isn't aware of delays or cost overruns well in advance, the practitioner might be accused of negligence or breach of professional duty. Whether or not the practitioner is at fault, clients may look to pass the financial responsibility onto the practitioner if an error or omission costs them money. And even if a claim is frivolous, the practitioner will still have to defend themselves to clear their name.

### HOW CAN PRACTITIONERS MANAGE THESE RISKS?

Here are 10 important tips to help practitioners avoid a claim:

1. **Practice good contract management.** Set clear expectations regarding the project, including the terms and conditions; the timing, delivery and termination of services; and pricing and payment schedules. Seek legal counsel if necessary.

The practitioner should ensure their legal obligations are understood and amend contracts as needed for adequate protection;

2. **Ensure the contractual ability to stop working if not being paid.** This is key in case a project gets held up. Additionally, all invoices should state that they are subject to the terms of the master agreement;
3. **Implement quality control processes.** The practitioner should review their work regularly and keep a list of active clients to avoid taking on more work than can be handled at one time;
4. **Document everything.** The practitioner should maintain a complete record of provided services and interactions, taking note of the date and time, all discussed topics, any issues and any recommendations made and why, along with the client's refusal if applicable;
5. **Be thorough.** The practitioner should take photos and/or videos of any problems or errors encountered, and always follow up discussions with a summary email, particularly for verbal agreements or instructions given to other parties;
6. **Be cautious.** The practitioner should not put their stamp of approval or sign-off on anything they're not 100 per cent comfortable with. Remember that the practitioner must explain their reasoning to a judge if it's called into question. Similarly, the practitioner shouldn't agree to switch materials or brands unless they have tested them and can certify the change will have no major impact. And the rationale for switching and/or not switching materials should always be documented;
7. **Don't certify what can't be seen,** even if a contractor states that they've done something before with no issues. Instead, the practitioner should conduct their own research and ask for third-party reports on efficacy and safety before making any changes;
8. **Communicate.** The practitioner should keep all relevant parties informed of updates to such things as design plans and layouts, pricing and deadlines, bylaws and government and safety protocols, and they should be particularly mindful of budget and scheduling changes or anything else that could drive up the total cost;
9. **Strengthen insurance coverage.** The right coverage will ensure legal action doesn't jeopardize the practitioner's business by covering damages—legal expenses, administrative costs and court settlements—even if the claims made are groundless; and
10. **Consult with a risk advisor** who specializes in the engineering sector to help identify exposures, navigate industry trends and adopt a proactive approach to risk management.

For more information on professional liability insurance requirements under the C of A, refer to PEO's guideline *Certificate of Authorization Requirements: An Information Guide* ([www.peo.on.ca/sites/default/files/2019-09/CofA\\_Infoguide.pdf](http://www.peo.on.ca/sites/default/files/2019-09/CofA_Infoguide.pdf)). [e](#)

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