

Mistakes Happen

The Importance of Professional Liability Insurance

BY MARTIN CHARLTON COMMUNICATIONS

Doug Sanders, P.Eng. is a partner with the Borden Ladner Gervais law firm in BC and a professional engineer licensed with APEGS. He currently deals with contracts for large infrastructure and construction projects, but in the past he's defended architects and engineers from claims of civil liability.

He says the most common civil liability issues engineers and geoscientists see are breach of contract and negligence claims.

"Negligence from an engineering perspective would be something like errors or omissions in designs," he explained.

"Probably something like failing to deliver your services on time would be a reasonable sort of example of breach of contract claims."

Engineers and geoscientists should know the potential sources for civil liability and what their risks are so they can try to address those risks and avoid any problems.

"One of the things I try to impress upon people is that ultimately we can only do the best that we can do," said Sanders.

"There are a lot of engineers who go through their entire careers without encountering a single lawsuit or claim, but there are others who, for whatever reasons, see a number of lawsuits. In part, all you can do is your best from a professional perspective. If it turns out you made a mistake, that's when you want your insurance there to protect you."

All APEGS members in good standing are automatically enrolled in the National Secondary Professional Liability Insurance Program, which provides insurance for individual liability for professional services they provide. (See sidebar.) Maintaining professional liability insurance is essential, Sanders says.

"For the most part, people try to do their best, but there are a lot of pressures and frankly people make mistakes," said Sanders.

"That's why you maintain insurance. If your house is never going to burn down or you're never going to get into a car accident, you wouldn't buy insurance. But things happen and people make errors and that's ultimately what creates civil liability."

All professionals are responsible for the work they do, even if - and perhaps especially if - something goes wrong.





Sins of Omission

Douglas Curliss, QC agrees with Sanders about pressures in the workplace.

“There are all kinds of pressures out there in the work place in one form or another,” said Curliss, Counsel, Public Prosecution Service of Canada, Saskatchewan regional office.

Unfortunately, sometimes these pressures lead not just to civil liability, but to criminal or quasi-criminal liability.

There are “at least dozens and maybe hundreds” of environmental regulations in Canada at the municipal, provincial, and federal levels, says Curliss. There are just as many laws on the health and safety side of criminal liability.

Some of those laws work the way we imagine most laws to work: they say you can’t do something. But other laws say you have a positive duty to do something - those laws are broken by omissions.

Supervisors in particular need to know their responsibilities in this regard, says Curliss.

“Supervisors now have a greater liability for not doing things than they used to,” he said. “If the supervisor sees something happening, like an employee that’s about to do something dangerous... failing to act, failing to stop something from happening, is resulting in more and more criminal liability or quasi-criminal liability.”

Curliss’s advice:

If you think something seems off, tell someone. Even if you’re just doing what someone else told you to do, you could still end up being guilty of criminal or quasi-criminal offences.

Clearly, professional liability insurance won’t protect you from facing a claim or lawsuit, but it will help with the financial hardship of such a situation. Employers often cover part of the expenses, but the National Secondary Professional Liability Insurance Program helps with additional expenses professionals are often required to pay as an individual.

What’s APEGS Role?

Hopefully members will never see a civil liability or criminal liability case but if a member does what steps will APEGS take to help.

Technically, APEGS doesn’t handle civil liability or criminal liability cases, but if a member faces in such a case, it might be an indicator of professional misconduct or professional incompetence, which APEGS does deal with.

Members are bound by a code of ethics, explains Robert McDonald, P.Eng., APEGS director of membership and legal services. If you break that code, you may have your licence revoked.

One example of professional misconduct that McDonald cites working outside a members area of competence.

“I’m a chemical engineer, and you’d be surprised how many people phone the office and ask, ‘Are you a professional engineer? Can I bring my house plans down to your office and can you put your seal on it so I can get a building permit?’ Sorry, but I know nothing about structures.”

Professional incompetence will come as a result of a catastrophic failure, for example, if a building falls down, says McDonald. While still under investigation, a recent event that may come to mind for many is the collapse of the roof of the Algo Centre Mall in Elliot Lake, Ontario on June 23.

The APEGS system is complaints-based. If APEGS receives a complaint, it investigates it in a fair and objective fashion.

APEGS saw about five to 10 complaints per year and it generally holds one or two discipline hearings, though some years it has no hearings at all. Even though APEGS has a large and ever-growing number of members, it doesn't have a large number of complaints, McDonald says.

Although the system is complaints-based, if there is a catastrophic failure, APEGS will look into the issue, which is why it participated in the North Battleford water inquiry in 2001. A cryptosporidium bacterium outbreak was traced to the city's water treatment plant.

"It was a failure of an engineered system and 7,000 people got sick. From that perspective, we're looking to see who were the engineers involved," said McDonald.

Generally, no one sets out to deliberately violate the code of ethics or to create a poor design, says MacDonald. If something does go wrong, APEGS supports its members in every way it can, but first and foremost, its obligations are geared toward public safety and public interest.

APEGS proactively tries to keep members out of trouble through professional development and its law and ethics seminar, but it has no tolerance for members who are found to have deliberately broken the code of ethics.

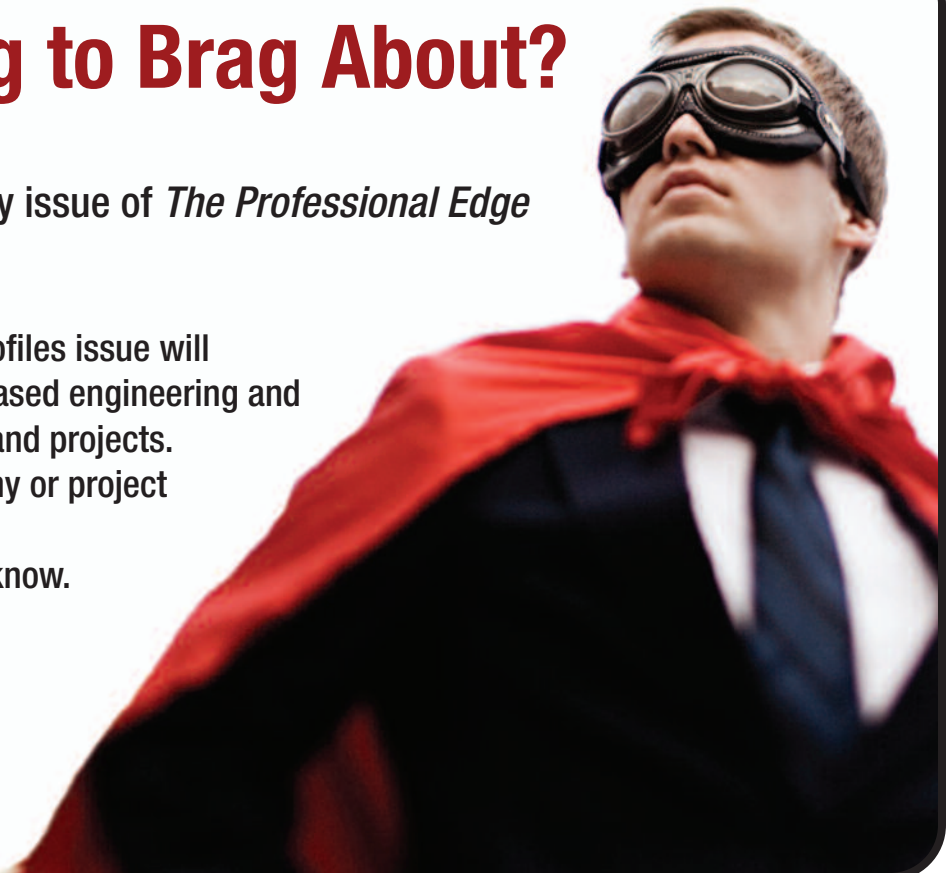
If you have any questions about the APEGS code of ethics or secondary professional liability insurance, please visit apegs.sk.ca or call 1-800-500-9547.

Something to Brag About?

The January-February issue of *The Professional Edge* is all about you!

Our annual Company Profiles issue will profile Saskatchewan-based engineering and geoscience companies and projects. If you want your company or project profiled, or would like to recommend one, let us know.

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Secondary Professional Liability Insurance Program

SUBMITTED BY HUB INTERNATIONAL

NOTE: *This information has been submitted by the insurance provider. APEGS does not provide advice, interpretation or endorsement on insurance matters.*

APEGS, along with other provincial associations, voted to make Secondary Professional Liability Insurance coverage available to its members. APEGS collects the required fee from its members as part of the annual membership registration.

The Secondary Professional Liability Insurance program provides cover to individual engineers and geoscientists. It does not cover firms, corporations, public entities or employers. These groups are expected to carry professional liability insurance for their businesses.

The Secondary Professional Liability Insurance coverage is meant to cover members and legal representatives of deceased members for their individual liability arising out of professional services for the following scenarios:

- When you are working at a non-consulting firm, you are not a decision maker of the firm, and you are performing professional services. Such as a university professor gives design advice or you design something for your employer who is a manufacturer.
- When you change employment there is coverage for your past professional services provided to the former firm if that firm no longer provides insurance protection to you. Some restrictions apply to decision makers.
- When an engineering or geoscience consulting firm ceases operation or goes bankrupt you will have personal coverage. Some restrictions apply to decision makers.
- When you retire, you have protection for past work. If you worked for an engineering or

geosciences firm cover is available only if the firms that you worked for in the past do not provide you with protection. Some restrictions apply to decision makers.

- When you provide consulting services outside of regular employment activities or while in retirement and the compensation that you receive for all projects is \$15,000 or less per calendar year.

Decision makers have some coverage under the Secondary Professional Liability Insurance coverage. A decision maker is defined as a director, officer or sole proprietor of an entity or any associate or shareholder who holds more than 10 per cent of the shares of the entity or shares issued that include voting rights of an entity. Coverage extends for the following scenarios:

- If you are a decision maker of a non-consulting firm or an entity that constructs, manufactures, installs, fabricates or engages in some other activity you are insured if you had a role as a designer in the product produced by the firm for claims related to the design of the product.
- If you were a decision maker of your former firm that ceased operations the policy provides coverage after a six-month waiting period following entry into receivership or bankruptcy of the firm or the policy provides coverage after a two-year period following the closure and cessation of operations of the consulting firm.

The Secondary Professional Liability Insurance provides \$100,000 per claim in coverage for damages plus defence costs. Coverage extends to members in training and it covers mentoring.

Please refer to the policy wording for the limits, deductibles, terms and conditions.