



Improving the Practice - Primary Professional Liability Insurance

Improved Public Interest

To ensure that the interests of the public are protected in the event of errors or omissions by Members or Permit Holders, APEGA must have the ability to mandate primary professional liability insurance for Members and Permit Holders who provide consulting services.

Background

- Although many APEGA Members and Permit Holders voluntarily purchase professional liability insurance (errors and omissions insurance), such insurance is not currently required under the *Engineering and Geoscience Professions Act (EGP Act)*, *General Regulation* or *Bylaws*.
- Similarly, there is no obligation for Members or Permit Holders to make a mandatory declaration that they do not have professional liability insurance. Rather, Members and Permit Holders must ensure stakeholders are aware of the risks inherent in their projects.
- Approximately half of the engineering and geoscience regulators in Canada require primary professional liability insurance for individuals and firms providing consulting services.
- Other self-regulated professions in Alberta (accountants, lawyers, dentists, physicians, and veterinarians) require primary professional liability insurance. At the request of the Government of Alberta, the Alberta Association of Architects is currently considering changes to its legislation to include a requirement for professional liability insurance.
- The Government of Alberta has asked APEGA to consider adding a requirement for professional liability insurance in the course of our legislative review project.
- Some of the engineering and geoscience associations in Canada that require primary professional liability insurance coverage as a condition of licensing/membership have mandatory insurance programs, while others have adopted compulsory programs. In a mandatory program, the Member

(or the Member's firm) is responsible for securing coverage and providing proof of insurance when requested. In a compulsory program, the member (or the member's firm) must purchase basic coverage from an insurer or program designated by the regulator.

- Primary professional liability insurance typically covers both the consulting firm and its employees for errors and omissions related to providing professional services.
- Primary professional liability insurance is not available to non-consulting Permit Holders (such as manufacturing companies, operating companies). These Permit Holders typically purchase general comprehensive liability insurance, but this insurance does not cover errors and omissions from the practice of engineering or geoscience by the Permit Holder or its employees.
- Employees of non-consulting Permit Holders can purchase optional individual professional liability insurance coverage for errors and omissions.
- APEGA Members are covered under the national secondary professional liability insurance program (SPLIP), but this coverage does not apply to errors or omissions resulting from the Member's professional practice. In addition, SPLIP does not cover Permit Holders or employers.

Why is this important?

- It is in the public interest that individuals, partnerships and companies who provide engineering and geoscience consulting services carry primary professional liability insurance to ensure the public is protected in the event of errors or omissions.
- Primary professional liability insurance also protects the individuals and Permit Holders themselves by providing coverage for errors and omissions (negligence and compensatory damages).
- It would bring APEGA in line with many constituent associations in Canada and other professional associations in Alberta.

Proposed
legislative
change

It is recommended that the legislation be amended to:

- Require mandatory primary professional liability insurance for all Permit Holders that provide consulting services, in accordance with requirements established by Council.
- Require all Permit Holders that provide consulting services to ensure that primary professional liability insurance is in place for any Professional Member operating under the Permit Holder's Permit to Practice regardless of the individual's employment status or contractual arrangement with the Permit Holder, in accordance with requirements established by Council.
- Impose consequences on a Permit Holder for failing to ensure that primary professional liability insurance is in place for the Permit Holder and any Professional Member operating under the Permit Holder's permit, including suspending the permit, practice review orders, or findings of unskilled practice or unprofessional conduct.

Effects of the
proposed changes

- Primary professional liability insurance will be mandatory for Permit Holders that provide consulting services.
- Permit Holders will be responsible to ensure professional liability insurance is in place to cover work done by the Permit Holder and all individuals operating under the Permit Holder's Permit to Practice. This would include temporary employees, term employees, and individuals retained by contract.
- Permit Holders could have their firms' professional liability insurance cover all of these employees or could require the individuals to purchase their own coverage. In either case, the Permit Holder is obligated to ensure professional liability insurance is in place to protect the public interest.
- Permit Holders will face consequences for failing to have professional liability insurance, including having their permits suspended, having practice review orders, or having findings of unskilled practice or unprofessional conduct against them.
- Council will prescribe the details of the specific professional liability insurance requirements through policy and approved practice standards.
- There will be no minimum for professional liability insurance coverage specified in the *EGP Act*, *General Regulation*, or Bylaws. However, there

will be a requirement for Permit Holders to declare their minimum coverage in their professional practice management plans (PPMPs), and the insurance must be in compliance with requirements established by Council. Permit Holders will decide for themselves what amount of coverage is appropriate for their professional activities and declare the amount and logic in their PPMPs.

- Professional Members who work for non-consulting Permit Holders will not be required to obtain separate professional liability insurance, but they may choose to do so to provide themselves with optional coverage.
- Changes are being proposed to the Permit to Practice system to require unincorporated sole practitioners to obtain a Permit to Practice. (Refer to the [Improving the Practice - Permits to Practice](#) briefing note for additional information on the quality control system requirement.) The combined effect of this with the mandatory professional liability insurance requirement is that sole practitioners offering consulting services will need a Permit to Practice and will require mandatory primary professional liability insurance.