

Professional Liability Claims

What Engineers Need to Know

As licensed professionals, engineers are regularly exposed to liability in their daily work. If you (or your business entity/company) offer and provide professional engineering services to clients, you (or the entity/company) assume professional responsibility for the services provided. This means that your client or others can make a complaint against you or the company to your regulatory body (e.g. Professional Engineers Ontario) if they are dissatisfied with your services or work. In our increasingly litigious society, your client can also file a lawsuit against you and request compensation for the damages they allege to have suffered.

Complaints to a regulatory body

Professional engineers are expected to comply with all professional obligations, including standards of practice and code of ethics. However, complaints can happen to even the most prudent and diligent engineers.

Anyone can file a complaint to your respective regulatory body if they are dissatisfied with your services, including a client, a colleague, or others. In Canada, each province and territory has its own legislation which regulates the practice of engineering and the way complaints are processed. In general,

when a complaint is made to your regulatory body, you may be required to prepare a response, reflecting on what happened and providing a rationale for your actions or conduct. Following investigation, your case may be brought before a formal disciplinary hearing, where the regulatory body will have the burden of proving its case against you. If the panel presiding at the hearing determines that you are guilty of professional misconduct or incompetence, the consequences could range from a reprimand, to limitations being imposed on your professional work, to the revocation of your license to practice.

The regulatory complaints process may vary from one jurisdiction to another. If you have any questions about your jurisdiction, we would recommend that you review the website of your provincial or territorial regulator for more details on how a complaint is specifically processed in your province or territory.

Legal action in the civil courts

In addition to, or in lieu of, initiating a complaint to the regulatory body, your client can also sue you in the civil courts for negligence or breach of contract relating to your professional services. Through these means, a client is able to recover damages, or financial

compensation, which cannot be recovered through the regulatory complaints process.

How OSPE is protecting engineers

Being faced with a lawsuit or regulatory complaint is one of the most frightening things that you can experience in your professional career. Let OSPE's insurance program partners help you through this process.

If a regulatory complaint or professional liability claim is made against you, you want the assurance of the best coverage and defence available to protect your reputation and livelihood. Participants in the OSPE insurance program have access to specialized legal services, with legal representation provided at no cost and without having to pay a deductible or any fees. And depending on the professional liability insurance limit selected, you have access to as much as \$5 million per claim should your client be seeking damages in the civil courts.

OSPE insurance in action

Below are examples of claims that have been notified under OSPE's insurance program:

A \$3M claim arising from the Insured's design of a connection sleeve used to connect a water lead tunnel to a generator in a hydro-power dam. It is alleged that the sleeve failed, resulting in reduced flow of water into the dam generator.

A \$1M claim resulting from alleged structural deficiencies arising from the Insured's alleged negligent specification and drawings in connection with the construction of a condominium. Claim for losses arising from the Insured's design of balconies, cladding, patios, windows and foundations.

A claim was made against a structural engineer who reviewed the design of a building and approved the client's drawings. The claim referred to the collapse of a barn roof due to corrosion and exposure to excessive moisture, as well as an inadequate ventilation system.

A claim was made relating to alleged deficiencies in the structural design of the walls of a 7-storey building. The Insured, a sole practitioner, allegedly failed to specify the correct number of stiffeners and lintels and, due to erroneous calculations, further anchors were required to stabilise wall columns.

In many cases, claims made against engineers are groundless and frivolous, arising out of miscommunication and the frustration of plaintiffs. In other cases, consumers truly suffer damages. Although it can be costly for a client to bring a claim against an engineer in the civil courts, a complaint to the regulatory body is a low cost and convenient alternative for those not seeking to recover financial compensation.

Although insurance is something we hope we never need, it is reassuring to know that the coverage and protection offered through the OSPE program is comprehensive and sustainable. OSPE's insurance program is dedicated to working with you to achieve peace of mind and the best possible outcome for all involved.

If a complaint or claim is made against you, contact BMS Canada Risk Services Ltd. (BMS Group). BMS Group is the exclusive broker for the OSPE insurance program.

The BMS Group professional staff will speak with you in confidence to provide advice and begin the claims management process. If the complaint or claim triggers coverage under your insurance policy, OSPE's legal partner, Corestone Law, will be appointed as legal counsel to represent your interests. Your Corestone lawyer understands the engineering industry, standards and practices and the firm prides itself in having a legal focus in professional negligence with specialized legal services for engineers.

Please note that this commentary is provided for general information purposes only and does not constitute professional legal or broker advice. Should you have any questions regarding the regulatory complaints process or civil litigation as it relates to your practice, please contact OSPE, your regulator, and/or consult legal counsel.

Helpful Contacts

OSPE's Program Partners are knowledgeable and here to help.

For more information, to report a claim or purchase coverage, contact BMS.

Toll-free: 1-844-294-2717

Email: ospe.insurance@bmsgroup.com