

# REGULATION RESPECTING PROFESSIONAL LIABILITY INSURANCE

## QUESTIONS AND ANSWERS

### NEW REGULATION

#### 1. WHY WAS A NEW REGULATION ADOPTED?

The new Regulation addresses the following problematic issues:

- the difficulty in complying with the requirement set out by the Professional Code that the insurance must continue to cover engineers for at least five years after they cease to practice;
- the fact that certain services or fields of practice are difficult to insure;
- the lack of coverage during certain periods, especially when engineers change their employer or their employer ceases its activities (e.g. goes bankrupt or closes);
- the OIQ's objective is better risk prevention for members who work in private practice, and to achieve this, it wants to obtain more statistics on the claims experience.

#### 2. WHY IS THE BASIC GROUP PLAN MANDATORY FOR ALL MEMBERS, INCLUDING THOSE WHO DO NOT PROVIDE ENGINEERING SERVICES, RETIRED ENGINEERS AND MEMBERS WHO ARE INSURED BY THE SUPPLEMENTARY PLAN FOR PRIVATE PRACTICE?

The basic group plan covers all OIQ members. This insurance covers many situations that can arise during their career for as long as they are OIQ members, and even five years after they cease to be members.

It covers:

- general practice,
- occasional private practice,
- and after the five-year period in which members who worked in private practice were required to maintain insurance for the services they performed in private practice.

In addition, the basic group plan covers members and their heirs during the five years after they cease to be members.

#### 3. AM I ELIGIBLE FOR THE OCCASIONAL PRIVATE PRACTICE COVERAGE OF THE BASIC GROUP PLAN FOR ENGINEERING SERVICES THAT I PERFORM WHILE I AM THE ONLY EMPLOYEE OF MY COMPANY?

The group insurance plan entered into by the OIQ covers all members who provide professional services alone and for their own account and receive fees equal to or lower than \$10,000 for all projects they complete during a year. The concept of "alone and for their own account" concerns self-employed workers and members who work alone for a sole proprietorship, and not for a partnership or legal person (e.g. an incorporated business). This means that members who engage in private practice for a partnership or legal person of which they are the sole shareholder and employee are not covered by the basic group plan and must enrol in the supplementary plan.

### BENEFITS FOR MEMBERS IN PRIVATE PRACTICE

#### 4. MY EMPLOYER ALREADY PAYS FOR MY INSURANCE. HOW DOES THE NEW SUPPLEMENTARY PLAN FOR PRIVATE PRACTICE BENEFIT ME? WHAT ADDED VALUE DOES IT PROVIDE?

Your employer can continue to insure you through the group supplementary insurance plan of the OIQ. However, you must remember that the obligation of being insured rests with members; in the event that your employer does not enrol you in the group supplementary insurance, you are required to do so. The OIQ's insurance specifically covers you in the five years after you complete your last engineering service in private practice, even if you quit your job or cease to practice engineering or your employer goes bankrupt, which was probably not the case with your former policy. Furthermore, its coverage extends to all fields of professional practice.

**5. I WORK AS AN ENGINEER IN PRIVATE PRACTICE IN A FIELD THAT IS HARD TO INSURE. IN ADDITION, MY INSURER HAS ALWAYS REFUSED TO INSURE ME FOR A PROJECT THAT IS CONSIDERED TO BE IN A SEPARATE CATEGORY BY THE PREVIOUS REGULATION (SECTION 7.1). CAN I INSURE MYSELF WITH THE OIQ'S NEW SUPPLEMENTARY PLAN?**

The new Regulation, which came into force on April 1, 2013, provides that the group supplementary plan for private practice covers all members, regardless of their field of practice, including those that use to fall within a separate category.

**6. WE CARRY OUT PROJECTS FOR CLIENTS THAT REQUIRE LIABILITY INSURANCE WITH HIGHER LIMITS THAN THOSE REQUIRED BY THE REGULATION (MORE THAN \$1 MILLION PER LOSS AND \$2 MILLION PER YEAR). IS IT POSSIBLE TO TAKE OUT ADDITIONAL INSURANCE TO COVER THESE EXCESS AMOUNTS?**

Yes, the group supplementary plan entered into by the OIQ offers optional excess layers of insurance coverage.

**7. ARE MY PAST ENGINEERING SERVICES COVERED BY THE OIQ'S SUPPLEMENTARY INSURANCE PLAN?**

Yes, the professional services you performed prior to enrolling in the OIQ's group supplementary plan are covered, provided that any claim in relation to these acts is first filed against you during the coverage period of the group supplementary plan. When you enrol in the plan, you or the person designated by your employer to manage your insurance file will have to report all claims filed with your previous insurer in accordance with the terms and conditions of your contract.

**8. CAN MY COLLEAGUES WHO ARE NOT ENGINEERS BE COVERED BY THE OIQ'S SUPPLEMENTARY PROFESSIONAL LIABILITY INSURANCE, LIKE THEY WERE BY MY EMPLOYER'S PREVIOUS INSURANCE PLAN?**

The insurer represented by the OIQ's broker offers insurance for these types of situations.

**9. DOES THE INSURANCE COVERAGE COVER ONLY PROFESSIONAL SERVICES PROVIDED IN QUÉBEC?**

No. The insurance also covers services provided abroad through a clause in the group supplementary insurance plan.

**10. IS MY ESTATE COVERED FOR THE PROFESSIONAL SERVICES I PERFORM?**

The group supplementary insurance covers members and their heirs against any claim filed in the five years after the period in which they cease to work as engineers in private practice.

## MINIMUM REQUIREMENTS OF THE INSURANCE

**11. WHAT ARE THE MINIMUM COVERAGE AMOUNTS PROVIDED IN THE NEW REGULATION RESPECTING GROUP INSURANCE FOR MEMBERS WORKING IN PRIVATE PRACTICE?**

The minimum coverage amounts provided for an individual who works alone in private practice are \$500,000 per loss and \$1,000,000 for all losses during the coverage period. However, these minimum coverage amounts are \$1,000,000 per loss and \$2,000,000 for all losses during the coverage period in the event that the insurance is taken out by a member or a company (partnership or legal person) for members whom it employs or who are directors, officers, shareholders or partners.

**12. WILL THE GROUP SUPPLEMENTARY PLAN COVERAGE BE UNIFORM FOR ALL MEMBERS, GIVEN THAT PRACTICE VARIES FROM ONE MEMBER TO ANOTHER?**

The Regulation specifies the minimum requirements that the group insurance plan must meet. The insurance contracts of all members will include these requirements. However, depending on the nature of their practice and the degree of risk to which they are exposed, members may request that their particular insurance contract include greater requirements than those provided in the Regulation (e.g. higher coverage amounts).

**13. THE MINIMUM COVERAGE AMOUNTS HAVE BEEN INCREASED. WILL THIS AFFECT MY PREMIUM?**

These amounts were updated to reflect the potential damages that can now be incurred in the practice of the profession. The primary layers of the insured amounts are the most expensive because they are intended to cover the majority of claims. If the amounts of your current coverage already meet the minimum amounts set out in the new Regulation, there will not be a great deal of change. Furthermore, the OIQ entered into an agreement with the insurer that offered the most beneficial transition for members who need to increase their coverage amount.

**14. WHY DOESN'T THE REGULATION PROVIDE HIGHER COVERAGE AMOUNTS?**

The Regulation provides minimum amounts of coverage; they are twice the amounts required by the previous insurance plan for private practice. Members who feel that this coverage does not adequately cover the risk in their specific situation can take out additional coverage.

**15. IS THE COVERAGE FOR THE “FIVE YEARS AFTER THE LAST SERVICE” INCLUDED IN THE PREMIUM OR DO MEMBERS HAVE TO PAY AN ADDITIONAL PREMIUM DURING THE FIVE YEARS AFTER THEY CEASE TO PRACTICE?**

The premium paid for the supplementary plan covers members against any professional liability claim that may be filed against them in the five years after they provide their final service. Accordingly, when members who are covered by the supplementary plan cease to work in private practice, they do not have to continue to pay a premium for the next five years. This also means that when members retire or change employers, or even when their employer goes bankrupt, their engineering services will remain insured for five years and they will not have to pay premiums during the five years after they cease to work in private practice.

## **OBLIGATIONS AND SPECIFIC SITUATIONS**

**16. I WORK FOR A CONSULTING ENGINEERING FIRM. IS MY EMPLOYER OBLIGATED TO INSURE ME?**

The situation has not changed. Both the previous regulation and the new Regulation stipulate that it is the obligation of members, and not their employers, to comply with the requirements of the respective regulations. However, you can fulfill your obligation through your employer if it enrolls in the OIQ's group supplementary insurance plan. Otherwise, you will have to enrol yourself in the OIQ's group supplementary plan.

**17. THE RISK OF LEGAL PROCEEDINGS IS VERY LOW IN MY AREA OF PRACTICE. WHICH PROVISION REQUIRES ME TO ENROL IN THE OIQ'S SUPPLEMENTARY INSURANCE PLAN?**

All members who work in private practice, except for those who have been exempted, must enrol in the group complementary insurance plan in accordance with section 93d) of the Professional Code and section 3 of the new Regulation respecting professional liability insurance for members of the Ordre des ingénieurs du Québec.

**18. DO MEMBERS WHO WORK FOR ENTREPRENEURS, HYDRO-QUÉBEC, GOVERNMENT DEPARTMENTS SUCH AS TRANSPORT CANADA OR UNIVERSITIES HAVE TO ENROL IN THE OIQ'S SUPPLEMENTARY PLAN WHEN, AS PART OF THEIR JOB, THEY PREPARE PLANS AND SPECIFICATIONS OR PERFORM OTHER ENGINEERING SERVICES FOR PROJECTS THAT WILL BE CARRIED OUT BY THEIR EMPLOYER? ARE THEY CONCERNED BY THE DEFINITION OF “PRIVATE PRACTICE” IN THE REGULATION?**

Not necessarily. The requirement of enrolling in the group supplementary plan concerns members who are engaged in private practice. Private practice is defined as follows: “*A member is working in private practice if he renders professional services for his own account, or for the account of another member, partnership or legal person, to clients that are not his employer.*” (unofficial translation)

Members who are generally considered to be working in private practice: members who work for a consulting engineering firm and all members who provide engineering services for an external client (e.g. self-employed consultants, building or other inspectors, members who work in an analytical laboratory, university employees when they provide services to the university's clients and any other expert who gives advice on work of the type that constitutes the field of engineering practice). Members who are not working in private practice but rather in general practice are covered by the OIQ's mandatory group insurance plan for up to \$250,000 per loss (this coverage amount is effective since March 31, 2013). Members who feel that this amount does not adequately cover their risk can take out optional additional insurance.

**19. WITH THE NEW REGULATION, CAN I CONTINUE TO BE COVERED BY THE MANDATORY GROUP INSURANCE PLAN FOR THE OCCASIONAL PRIVATE PRACTICE THAT I ENGAGE IN ALONE AND FOR MY OWN ACCOUNT?**

Yes. Furthermore, in the new Regulation, the \$2,000 limit per project was revoked. Still, to receive the insurance coverage of the group insurance plan, your total fees must be equal to or less than \$10,000 for all projects you complete in a given year and you must practice alone and for your own account. This will be the case even if it is your principal employment (alone and for your own account). Members who want to work in private practice and exceed the total fee limit of \$10,000 must take out excess insurance, which provides greater and more appropriate coverage for this type of practice.

**20. CAN I BE EXEMPTED FROM ENROLLING IN THE GROUP SUPPLEMENTARY PLAN?**

Members may be exempted from enrolling in the supplementary plan if they work at a company (partnership or legal person) that has taken out an insurance contract on their behalf that meets the requirements set out in the Regulation and has a deductible of \$1,000,000. They will still have to enrol in the component of the group supplementary plan for the five-year coverage if their employer's insurance does not meet this requirement.

**21. WHY DOES THE OIQ REQUIRE RETIRED MEMBERS TO MAINTAIN LIABILITY INSURANCE WHEN THEY HAVE NOT WORKED IN PRIVATE PRACTICE FOR MANY YEARS?**

The Professional Code requires all members who cease to work in private practice to maintain insurance coverage for an additional period of five years. This requirement applies whether or not these members have ceased to work in private practice because they changed jobs or retired. The insurer will offer retired engineers an insurance product that allows them to obtain this coverage for their past engineering services.

**22. WHAT IS THE CLAIM SETTLEMENT PROCESS FOR MEMBERS WHO HOLD EXCESS INSURANCE WITH ANOTHER INSURER? CAN THE MATTER BE ENTRUSTED TO THE ATTORNEY OF MY CHOICE OR WILL IT BE HANDLED BY THE ATTORNEY OF THE INSURER THAT PROVIDES MY EXCESS COVERAGE?**

If your excess insurance is provided by a different insurer, then the first insurer, i.e. the insurer of the OIQ's group supplementary insurance plan, would be involved for the first layer of coverage. When claims concern both insurers, they work together. It should be noted that in such cases, policyholders must advise all of their insurers that a claim has been filed. The attorney will be chosen by the OIQ's group supplementary insurance plan for the first insurable layer. However, depending on the complexity of the claim, the nature of the dispute and the attorney's area of expertise, the insurer may request the services of your usual attorney or one suggested by the insurer providing the excess coverage.

**TRANSITION PERIOD – PAYMENT OF THE PREMIUM UNDER THE NEW CONTRACT**

**23. DOES THE REGULATION TAKE INTO ACCOUNT THE FACT THAT SOME MEMBERS MAY BE PENALIZED BECAUSE THEIR CURRENT INSURANCE CONTRACT HAS A LONGER TERM THAN ONE YEAR (E.G. THREE YEARS) AND THEIR INSURER MAY PENALIZE THEM FOR ENDING THEIR CONTRACT BEFORE THE TERM?**

Generally speaking, insurers recognize that a multi-year policy can be cancelled on the anniversary date of the premium without a penalty. Therefore, except in rare cases, members who cancel their contracts on the premium payment date in the second or third year will not be penalized.

In an effort to ensure a smooth transition, the new Regulation stipulates that members should enrol in the insurance required by the new Regulation on the expiry date of their current insurance contract or no later than twelve months after the date on which the new Regulation comes into force. Nevertheless, the OIQ suggests that members check with their insurer to find out the specifics of their contract in this regard.

**24. THE FIRM WHERE I WORK HAS EXCELLENT RELATIONS WITH OUR CURRENT INSURANCE BROKER. WITH THE MANDATORY PROGRAM, HOW WILL ONE SINGLE INSURER MANAGE TO PROVIDE CUSTOMER SERVICE TO ALL THE MEMBERS WHO WORK IN PRIVATE PRACTICE?**

The OIQ's Board of Directors took customer service and other issues into serious consideration when it chose the broker and the group insurance plan. We have obtained a guarantee that they will provide high-quality customer service by specifically assigning a staff member to each member file. The same goes for claims.

The selected broker and the insurer are well-established companies that have been in business for many years and already have a very large segment of the current professional liability insurance market for engineers and engineering firms.

**25. HOW DID THE OIQ MAKE SURE THAT IT CHOSE THE BEST INSURANCE PRODUCT AT THE BEST PRICE?**

The OIQ held a competitive bidding process involving many companies and chose an insurer from the finalists that already held a very large segment of the market. The OIQ's Board of Directors made its choice after a thorough review of the bids and in consideration of its selection criteria, which was intended to ensure a smooth transition for its members, especially as concerns the premiums.

**26. OUR FIRM HAS A VERY GOOD RECORD WITH OUR CURRENT INSURER. WILL HAVING A GROUP PLAN AFFECT OUR PREMIUM AND THE PRACTICE OF ALL MEMBERS?**

First of all, the premiums are personalized. Therefore, your insurance record will have a direct impact on your premium, just like before.

Second, the insurer will provide members with various prevention tools, such as information and customized training. The training will be eligible for the OIQ's mandatory continuing education activities. Some activities may even result in premium reductions with the insurer.

**27. WHEN DO I HAVE TO ENROL IN THE NEW GROUP SUPPLEMENTARY PROFESSIONAL LIABILITY INSURANCE PLAN FOR PRIVATE PRACTICE? DO I HAVE TO PAY THE AMOUNT OF MY PREMIUM AS PART OF THE ANNUAL REGISTRATION PROCESS?**

The members concerned must be enrolled in the group supplementary plan. Members who already hold professional liability insurance must enrol in the new group plan by the expiry date of their policy or no later than twelve months after the Regulation has come into force, i.e. April 2, 2014. Employees of consulting engineering firms must find out the expiry date of their current policy from their employers. Before the expiry date of your insurance, you or the person designated by your employer to handle insurance will have to contact the OIQ's exclusive broker, which will provide you with a quote for the group supplementary insurance plan. The insurance premium can be paid directly to the broker when you enrol in the group supplementary plan.

**28. HOW ARE THE PREMIUMS OF THE OIQ'S NEW GROUP SUPPLEMENTARY INSURANCE PLAN CALCULATED?**

The premiums are calculated for each member or employer. In other words, the premiums are based on the following key factors: the field of professional practice, the sales volume and the loss experience of the insured.

### **29. IS THE INFORMATION ABOUT LOSSES DISCLOSED TO THE OIQ OR THE SYNDIC OF THE OIQ?**

Nominative or any other information that makes it possible to identify individuals or companies will never be sent to the OIQ. A nameless claim report will be sent to the OIQ to inform it of the nature of the claims filed so that it can more effectively adapt the risk prevention messages that it sends to members.

### **30. WHY DOESN'T THE REGULATION REQUIRE THE EMPLOYER TO PAY THE INSURANCE PREMIUM AMOUNT?**

The Professional Code does not authorize the OIQ to require employers to pay the professional insurance premium of the members they employ. The obligation of insuring their liability against claims rests with members. However, nothing prevents employers from paying the premiums of their employees, as many engineering firms do.

### **31. WILL THE WAVERS OFFERED BY CERTAIN CLIENTS STILL BE ACCEPTED?**

Under the previous regulation, waivers issued by clients or employers were accepted only for members who practiced in one of the sectors stipulated in section 7.1 (rail, nuclear, aerospace, naval architecture, asbestos removal and contaminated site rehabilitation). All fields of engineering, even those in a separate category from the abovementioned sectors, are now covered by the new group supplementary insurance plan. This measure affords greater protection to the public and members.

### **32. CAN MEMBERS OBTAIN A COPY OF THE INSURANCE CONTRACT?**

Members will be able to read the contract on the OIQ's Web site.

## **INSURER'S AND BROKER'S CONTACT INFORMATION**

### **33. WHO IS THE OIQ'S EXCLUSIVE BROKER AND INSURER FOR THE MANDATORY GROUP SUPPLEMENTARY PLAN?**

The insurer of the mandatory group supplementary plan is Encon inc.

The OIQ's exclusive broker is:

**Dale Parizeau Morris Mackenzie inc.**

700-3400 De Maisonneuve Blvd. West

Montreal, Quebec H3Z 0A5

Tel: 514 282-1112

[ingenieur@dpmm.ca](mailto:ingenieur@dpmm.ca)

All members must be insured through this broker, either as part of the group plan, from the annual contribution for all members or as part of the group supplementary plan for members in private practice starting on April 1, 2013, the date on which the new Regulation came into force. Members who already hold insurance must enrol in the group supplementary insurance plan by the expiry date of their current professional liability insurance policy or no later than twelve months after the Regulation came into force, i.e. April 2, 2014.

### **34. WHEN WILL THE GROUP SUPPLEMENTARY PLAN BE AVAILABLE?**

The group supplementary plan is already available to all members.