

PREJUDICIAL ERRORS

Should you notify your client, your insurer or both?

Nothing is perfect. During the course of their practice, engineers can commit errors... some harmless, while others can have serious repercussions, even causing prejudice to their clients and to the public. The question then begs: how does one reconcile one's professional obligation to disclose an error and one's contractual obligations relating to professional liability insurance?

NOTIFYING THE CLIENT?

First, let's consider the client. Clients don't always have the technical knowledge required to assess the consequences of possible errors. For that reason, they expect engineers who work for them to act with a certain "transparency".

This behaviour goes hand in hand with the integrity we've come to expect from professional practices. Section 3.02.05 of the Code of ethics of engineers states that "an engineer must inform his client as early as possible of any error that might cause the latter prejudice and which cannot be easily rectified, made by him in the carrying out of his mandate". Let us note that the Code does not require engineers to disclose every error that they may have committed during the course of their mandates, but merely those that are potentially prejudicial or which cannot be rectified. It bears reminding that the Ordre's Disciplinary Council can find an engineer guilty for having violated this section if he or she neglects to notify a client of any prejudicial error or an error which cannot be

easily rectified committed during the course of his or her mandate. The engineer can then be sanctioned, even without proof of a prejudice, since the mere fact of breaching one's duty to disclose constitutes one of the main components of the infraction.

Other than having their professional liability sanctioned by the Disciplinary Council, engineers who fail to notify their clients of such errors could be held liable on the civil, penal or even criminal front.

Consequently, engineers must inform their clients as soon as possible of any potentially prejudicial or irreparable error committed while carrying out their mandates for those clients

NOTIFYING THE INSURER?

First and foremost, it should be noted that none of the clauses in an insurance contract can conflict with section 3.02.05 of the Code of ethics since this provision is of public order. That being said, what should be made of the clause entitled "Your duties in the event of a claim" in the members' professional liability insurance policy? (See Box)

This clause prohibits engineers from acknowledging their liability, avoiding their obligations or entering into an agreement or settlement without the insurer's consent, in the event of an error, omission or negligence. Breaching this provision could even lead to nullifying the policy with respect to the claim.

At first glance, the wording used in the



Definitions: prejudicial and not easily rectified

An error is “prejudicial” when it is likely to cause physical harm, material damages or moral damages to a person or adversely affect the quality of the environment.

An error is “not easily rectified” when it is such that it might result in unacceptable costs or major technical difficulties.

Your duties in the event of a claim

Admissions: you must not admit responsibility, assume any obligations or make any commitment of money or services without the insurer’s consent, even if you believe there may have been an error, omission or negligent act on your part. Any such admission, obligation or commitment will vitiate this policy as far as that particular claim is concerned. The only exception to this is the cost of emergency medical or surgical relief to others you have incurred in good faith.

Notices: as soon as you become aware of a claim, you must, as soon as practicable, provide written notice to the insurer, giving all pertinent details as to the circumstances surrounding the claim. As events unfold which may have an effect on the claim, you must continue to keep the insurer informed.

Encon Professional Liability Insurance Policy– Part IV – General Conditions

insurance policy seems to contradict the Code of ethics and gives rise to confusion. However, the policy clearly stipulates that the insured cannot acknowledge his or her liability (or an error, given that both are related to one another) without the insurer’s prior consent.

PROCEDURE

In other words, here are the steps one should follow to act in a professional and proactive fashion: when realizing that a potential error or a situation for which they can be liable has occurred, engineers should first notify their insurer, without having to wait for the client to file a claim. Given their expertise, insurers will then guide engineers, support them and insure that their interests are protected, in compliance with applicable laws, obligations and codes.

With the insurer’s approval, engineers can then notify their clients of the problem and suggest possible solutions, which will demonstrate their good faith.

In summary, by notifying their insurer first then their clients of a potential prejudicial error, engineers thereby abide by their Code of ethics, and in doing so, they are sure to promptly receive the services of a claims specialist and best serve their clients. It bears reminding that when in doubt on the seriousness of an error or omission, it is also advisable to notify the insurers then the clients. Better safe than sorry!