YPG Quarterly Newsletter

Winter – Spring 2013

Many YPs enter the consulting world with limited knowledge of business practices. Most have had limited exposure to contracts, fees, or procurement procedures during their education and early career. As YPs move towards leadership roles on projects and in their firms, it becomes increasingly important to build an understanding of business practice issues and challenges. ACEC-BC helps to educate YPs about these issues through our Breakfast Seminars.

One of the core purposes of ACEC-BC is to work for member firms on business issues around consulting engineering. The Business Practice Committee and the Board of Directors are actively engaged in building a better business climate for our companies and our clients. ACEC-Canada is also active on business practice issues. The national organization offers contracts and agreements that are periodically updated to reflect current practice.

This Quarterly Newsletter has a special focus on highlighting business practices and issues. It includes two feature articles:

- Special update from the Business Practice Committee
- Special exploration of ACEC's new contract document suite

We hope you enjoy this newsletter. Elections for next year's ACEC-BC YP Steering Committees are approaching fast. There are opportunities to get involved in the YPG's activities or to join one of ACEC-BC's other committees as a YP rep. Watch your inbox for more information. As always, you can find us on Facebook, Twitter, or through email at info@acec-bc.ca.

Allison Clavelle, Chair, ACEC-BC Provincial YP Steering Committee

Also in this edition:

Focus on Committees: What is the Business Practice Committee?

Graeme McAllister, EIT, YP Representative to the Business Practice Committee
Geotechnical Engineer at Levelton Consultants Ltd.

The Business Practice Committee works for member firms on the business issues of consulting engineering. This includes developing the ACEC-BC engineering fee guidelines and budget guidelines, which are recommended by the committee to the ACEC-BC board annually. The committee also liaises with other committees that deal with business practice issues, such as the APEGBC Consulting Practice Committee, Metro Van Liaison Committee, MMCD Committee, and the P3 Committee.

Other committee tasks include working to develop and promote recommended positions on standard form agreements, limitation of liability clauses, indemnities, disclaimer clauses, ownership issues, and contract termination issues. Over the past year, the committee has also worked on developing Qualification Based Selection (QBS) initiatives through a series of internal workshops. QBS is a procurement process which facilitates selection of a consultant based on their qualifications, experience and competence. The committee hopes to develop an update to the existing QBS material which is available.

Various committee members are also involved with other committees, and will often act as the point of contact to the business practice committee, as required. Some time at committee meetings is typically allocated to discussion of other committee concerns, findings, etc., with committee members following up on action items as appropriate.

Committee Updates

ACEC British Columbia's committees help members deal with issues in procurement, contracts, proposals and legislation in four industry sectors: Transportation, Municipal, Building as well as Resource and Energy. ACEC also regularly meets with specific liaison groups to reach the needs of individual clients.
ACEC-BC YPG has a member on most of the committees that will sit in on the meetings, report back important information, and voice any concerns that the Young Professionals in our industry may have concerns about. Below are summaries of a few of the meetings so far in 2013.

Building Committee
The Buildings Committee is continuing to monitor the status of Ministry of Education; Ministry of Health; Wood First Act; and another number of items with no major updates. APEGBC is continuing evaluations on P.Tech designation with a joint board being formed. The buildings committee board is also reviewing APEG requirements for signing and sealing tender drawings and aims to provide a recommendation for ACECBC's stance to the ACECBC board. Professional liability insurance requirements in RFPs and general quality of RFPs are being reviewed. Additional discussion on BIM and prefab is ongoing in regards to scope of work and liability. Lastly, the board has elected a new chair: Michael Carlino (MMM Group).

MOTI Committee
The ACEC-BC MoTI Liaison Committee-at-Large (Committee) meets quarterly to discuss Ministry related topics that are of interest to consulting engineering companies. The committee is chaired by Zane Sloan of ISL Engineering and is comprised of individuals representing over a dozen member firms. On occasion, small sub-committees may be formed to examine specific topics in more detail. A small group of select individuals presents the concerns and positions of the Committee to

the appropriate Ministry staff with the goal of developing solutions that are satisfactory to both parties.

The most recent Committee meeting took place on March 7th, 2013. The prominent issue discussed was the revised BC Bid MoTI Request for Qualifications Template. The Ministry is revising the template it uses for BC Bid RFQs and has asked the Committee to provide feedback. The Committee identified a few items that still need to be addressed, but was pleased that many of their previous recommendations had been incorporated into the template. The Committee had asked that an evaluation matrix be incorporated into the template so that consulting companies can determine their ranking with respect to other consulting firms. The Committee was happy to see that the Ministry intends to provide meaningful scoring and ranking information to each Respondent.

Business Practice Committee
The Business Practice Committee last met in December 2012. The discussions were largely a continuation of initiatives discussed over the fall, and focused on what initiatives the Committee can take with respect to Qualifications Based Selection (QBS) and providing recommendations for the 2013 Consulting Engineers Fee Guideline. The Committee also discussed updating the current issue of the Budget Guidelines for Consulting Engineering Services. Finally, the Committee has dedicated some time to reviewing common contract agreement issues and consideration for use of electronic seals.

Consultants' Contraption

Based on the success from last year, the Consultants' Contraption will be occurring again in March of 2014. This coincides with National Engineering and Geoscience Month.

Congratulations to all the participants who were involved in the Consultants' Contraption last year as we raised over $3,250 for GEERing Up! and demonstrated BC's engineering prowess to the public!

A special thanks to the following:

Park Royal Shopping Centre
GEERing Up!
ACEC-BC YPG Steering Committee

Hatch Mott MacDonald
APLIN & MARTIN CONSULTANTS LTD
OPUS DAYTONKNIGHT
URBAN systems
LEVELTON
WorleyParsons resources & energy
julia ronmark design
eba A TETRA TECH COMPANY

More photos and a movie from the event can be found on the [Consultants' Contraption Facebook Page](#).

ACEC-BC YPG in the News

Recently, Business in Vancouver did an interview, with our very own Allison Clavelle (ACEC-BC YPG Chair) and Selena Wilson (FIDIC), highlighting the ever growing importance of communication in engineering. You can read the full interview about the *Soft Side of Engineers* here.

2012-2013 Breakfast Seminars

Below is a list of the final upcoming Breakfast Seminars for each ACEC-BC YPG region. Please note that this information could change in the future, so please visit the Events Calendar for updates!

Lower Mainland Group

18-Jun	Vancouver Hyatt Speaker: Panel Discussion Topic: Mentorship – Why it's critical to your career and how to set up an effective mentoring program at your organization

Vancouver Island Group

23-May	Location: tbd Speaker: Mike Currie (KWL) Topic: Engineer to Manager – What you need to succeed (Legal Aspects)

Okanagan Group

30-May	Location: tbd Speaker: Steve Frith Topic: The Importance of Openness in Fostering a Culture of Possibility

Events and Activities

Lower Mainland

The Lower Mainland YPG held a Breakfast Seminar on March 1. APEGBC came out to present on their mentoring program. Part II of the mentoring Breakfast Seminars (June 18) will be a panel discussion, of both Mentors and Mentees, where attendees can ask questions and obtain an understanding of how to implement a mentoring program for themselves.

The most recent Lower Mainland YPG Social was curling on March 20 at the Hillcrest Community Centre, and fun was had by all! Please check the next Newsbrief from ACEC-BC for a write-up on this event!

Okanagan

The Okanagan YPG held a Breakfast Seminar on February 7. The speaker was Leonard Firkus, Partner and Director of Implementation at Bellrock and the topic was *Empowering Young Professionals Through Communications: Effective Communications Through Technical Writing*. There was a good turnout of approximately 25 YPs.

The next Okanagan Breakfast Seminar is scheduled for May 30 (details will be updated soon). Also, look for a social in the upcoming month!

Social Media

To get information regarding upcoming YPG seminars and events please find us at your favourite social media outlet.

- Like us on Facebook: http://www.facebook.com/acecbc,
- Follow us on Twitter: @acecbc,
- Join our group on LinkedIn: ACEC British Columbia Young Professionals Group, or
- Check out our webpage: http://www.acec-bc.ca/young-professionals.

Young Professional Liaison

Want to keep your company and yourself informed about ACEC-BC YPG events and updates? Become a Young Professionals liaison! We are looking for one representative from each member firm to act as a liaison between their company and the APEG-BC Young Professionals Group. Please email us at ypg@acec-bc.ca to become your firm's ACEC-BC YPG liaison.

FIDIC

FIDIC (Fédération Internationale Des Ingénieurs-Conseils) is the International Federation of Consulting Engineers, which is an international organization that promotes engineering consulting. ACEC-BC YPG has a Young Professional affiliate (Selena Wilson) within the FIDIC organization that reports any interesting information.

Greetings Young Professionals around the world!

I am happy to report that the FIDIC 2012 Annual Conference held this September in Seoul, South Korea was a great success! We had an impressive turnout of over 100 Young Professionals from all around the world and a full Young Professional program enjoyed by all. I was inspired to meet so many passionate and dedicated YPs who are making a difference in their parts of the world. It was very encouraging to hear from many YPs who are committed to developing their local Young Professional groups, and YPs who spoke at our YP Forum sharing their knowledge of how to increase sustainability in our industry. You will find all of these YP conference highlights in this Newsletter.

Selena Wilson
FIDIC YPFSC Chair

For the latest FIDIC Young Professional information, please see their December newsletter!

ACEC Contract Documents

John Collings, P.Eng., F.I.C.E., Owner of Collings Johnston Inc., and the Chair of ACEC Contracts Committee, has provided the following memorandum regarding the *Limited Liability and Insurance Provisions in the new ACEC Suite of Contract Documents.*

Memorandum

COLLINGS JOHNSTON INC.

To:	John Gamble
CC:	ACEC Contracts Committee
From:	John Collings, Chair – ACEC Contracts Committee
Date:	November 05, 2012
Re:	Limited Liability and Insurance Provisions in the new ACEC Suite of Contract Documents

This memorandum has been prepared to assist speakers in their presentation of the new ACEC contract document suite to ACEC member companies and organizations.

Whenever engineering contracts and contract wording are discussed, the main focus is on liability and the desire to limit liability. The following is a commentary on liability issues intended to foster discussion and understanding of the subject.

The guide to ACEC Document 31, the agreement between the owner and the engineer, contains an excellent description on the subject of limiting liability for engineering risks. The insurance and liability clause (Part 14) has ten (10) sub-clauses that deal with liability and limitations on liability matters in an equitable manner.

The essential issue is that engineers must be prepared to accept the risk resulting from their professional services for a project. However, the risk exposure of an engineer is not proportional to the fees earned on a project. The monetary damage that an owner could face as a result of an engineer's error or omission will usually far exceed the fees charged. Engineers should not be placed in a position of "betting the farm" each time they accept a job – especially where the risk is large compared to the fees.

Risk exposure requires engineers to protect themselves by obtaining insurance. Engineers must limit their risks to an acceptable level, so that their clients "share" the exposure through their own insurance. Engineers take out errors and omissions insurance policies to cover only the engineering share of the risk.

Issues of how much insurance an engineer should carry, implications of indemnity and limitations of liability are discussed in the following dialogue with Owen Pawson, a partner with Miller Thomson LLP - a law firm in Vancouver and Steve Panciuk, an insurance adjuster with Encon Insurance Group. This document has also been reviewed by David Kauffman, a lawyer with De Grandpré Chait LLP in Montréal.

1. HOW MUCH PROFESSIONAL LIABILITY INSURANCE SHOULD A CONSULTING ENGINEER CARRY ON A PROJECT?

Typical Question
Most engineering companies now carry $1m of insurance for professional errors and omissions. But, clients are asking for as much as $5m or $10m of insurance coverage. What baseline amount should engineers be expected to carry, regardless of project scale and complexity? If the client wants the engineer to carry more than this baseline amount, should the client pay for the additional premiums? (Ref. ACEC 31, GC 14.1, 14.2, 14.3)

Steve Panciuk's and Owen Pawson's Response
The current baseline for engineers appears to be $1m for Professional Liability Insurance (PLI) and $2m to $5m for Commercial General Liability (CGL). However, many public projects require $2m in PLI coverage. The engineer must assess each project on its particular risk. Larger, more complex projects come with more risk and, insurance should be set accordingly. Insurance requirements should be more carefully scrutinized as the scope and complexity of a project increase.

If the consulting engineer is required to pay for insurance above its base amount, the cost of the added premiums should be negotiated with the client. The client pays one way or another for such insurance coverage - either directly through negotiation for additional payment of engineer premiums or through higher fees if the consulting engineer has to carry the cost.

Note that GC 14.1 says that the engineer will carry annual baseline PLI of $250,000 per claim and $500,000 in aggregate. This is minimal coverage and we suggest a baseline of $1m per claim and $2m in aggregate.

2. WHEN SHOULD A CLIENT CARRY WRAP-UP INSURANCE ON A PROJECT?

Typical Question
When should we expect the client to carry project wrap-up insurance or project specific professional liability insurance? (Ref. ACEC 31, CG 14.4)

Steve Panciuk's and Owen Pawson's Response
This will again depend on the size and complexity of the project, but it does seem to be a reasonable request for the engineer to make to a client on larger projects. Project specific wrap-up insurance is typically more expensive but does offer some advantages to clients where there is a single insurer for all consultants on a project thereby encouraging speedy settlement in situations where there is mixed liability (i.e., the same insurance company stands behind all consultants).

3. WHAT IS A REASONABLE LIABILITY PERIOD WITHIN WHICH CLAIMS CAN BE BROUGHT?

Typical Question
ACEC 31 (GC 14.5a) says that claims will be limited to those brought within the limitation period prescribed by law or, if permitted, within 2 years of completion or termination of the services - whichever occurs first. Does this sound reasonable?

Owen Pawson's and Steve Panciuk's Response
Acting for owners, I would say that, in general, the liability for professional negligence should extend to the period of time set out in the provincial statute of limitations. Certainly, it would be in the interests of any design professional to convince clients of a fixed 2 year limitation for professional liability claims. Clients however, may be resistant to your arguments given that some errors or omissions can appear well after 2 years (e.g. water ingress. mould claims).

If there is a limitation clause in the contract, you should consider any known project-specific circumstances and risks in determining whether to insist on an "ultimate" (fixed) limitation period. Although clients are unlikely to agree to a 2 year ultimate limitation period (i.e., no extension of time past the point of discoverability), for some professional engineering services, a 2 year period after a claim has been discovered is reasonable and can be argued to be industry standard.

4. SHOULD CONSULTING ENGINEERS BE REQUIRED TO REMEDY DEFECTS BY MEANS OF RE-PERFORMANCE BEFORE INSURANCE POLICIES ARE INVOKED?

Typical Question
Is this a reasonable expectation? (Ref. ACEC 31, GC14.5b)

Owen Pawson's and Steve Panciuk's Response
If the engineer can remedy an error or omission by fixing the drawings or specifications, then there will likely be no claim. But often the error is discovered after costs have been incurred by the client and there may be damages which flow from the error or omission. In that case the insurer needs to be notified immediately.

Even if there is a claim, an engineer usually can fix the mistake at a lower cost than would be charged by another engineer called in to correct the problem. So if an engineer (or his or her insurer) is responsible for rectifying a default, re-performance of the professional services may reduce the engineer's exposure (or that of the insurer). In addition, the engineer's cost to re-perform defective services may often be less than the deductible in the insurance policy. In other words, re-performance of the services in many circumstances may be in the financial interests of the engineer and the insurer.

Typically, there will be a cure period in contracts during which the engineer is required to remedy an error or omission. However, any re-performance of services should only be undertaken after appropriate notice of potential claim to, and advice from, your insurer. Remedial work should not be considered as the only protection for professional errors and omissions because, as noted, above, your client may have suffered some damages. Accordingly, appropriate insurance coverage needs be in place to cover those damages with a clause to limit liability to an identified amount. This amount should be less than the insurance coverage or, at most, limited to the extent of the available coverage.

5. SHOULD CONSULTING ENGINEERS BE EXEMPT FROM LIABILITY FOR PERFORMANCE OF MANUFACTURED PRODUCTS?

Typical Question
Is this a reasonable expectation? (Ref. ACEC 31, GC 14.6)

Steve Panciuk's and Owen Pawson's Response
Absolutely - engineers should not take on any risk for products manufactured by others.
All errors and omissions policies contain exclusion for mass produced items. But an engineer could design a CPCI girder, for example, which is manufactured or fabricated in a plant. We need to emphasize the issue of multiple units being manufactured rather than specified project items.

6. SHOULD LIABILITY CLAIMS BE RESTRICTED TO A COMPANY OR PARTNERSHIP, AND NOT TO INDIVIDUALS?

Typical Question
Is this a reasonable expectation? (Ref. ACEC 31, GC 14.7)

Owen Pawson's and Steve Panciuk's Response
Your client should not have any ability to sue individuals within your firm! Typically, the PLI insurance policy for a firm will cover all professionals in an organization. But in the event individuals in your company or partnership are named in the lawsuit, there is little that can be done to remedy the situation. Courts will not typically remove an individual from a lawsuit unless there is agreement by all litigants or it is demonstrated to the court's satisfaction that there is no cause of action against the individual.

7. CLAIMS AGAINST CONSULTING ENGINEERS SHOULD BE MADE FOR DIRECT DAMAGES ONLY, NOT CONSEQUENTIAL OR INDIRECT DAMAGE SUCH AS LOSS OF PROFIT OR MISSED BUSINESS OPPORTUNITY.

Typical Question
There is some increasing demand by clients to make the engineer responsible for consequential and indirect damages. Should we be concerned that this demand is not insurable? (Ref. GC 14.8)

Owen Pawson's and Steve Panciuk's Response
This is a very serious matter. A clause clearly stating that the consulting engineer is not liable for any "consequential or indirect damage" is important and the engineer should not waiver in insisting on such a clause. This could open a very large door for the client in claiming damages – damages that could be substantial and that will be very difficult to quantify (e.g., loss of sales, lost opportunities, etc.). Further, consequential or indirect damages may well be an exclusion to a PLI policy which will lead to the consulting engineer being at risk without insurance.

8. CONSULTING ENGINEERS SHOULD NOT BE RESPONSIBLE FOR HAZARDOUS WASTE UNLESS THIS IS SPECIFICALLY PART OF THE SCOPE.

Typical Question
Does this sound reasonable? (Ref. GC 14.9)

Owen Pawson's and Steve Panciuk's Response
Absolutely!

Hazardous waste constitutes an environmental risk which is typically an exclusion in PLI policies – this will leave a consulting engineer without insurance for that risk. Accordingly, consulting engineers should not provide professional advice on hazardous materials or environmental issues unless that advice is clearly part of the scope of their professional services and the issue of insurance coverage has been addressed.

9. ENGINEERS SHOULD EXPECT MUTUAL INDEMNITY BY EACH PARTY TO THE AGREEMENT FOR 3RD PARTY CLAIMS, BREACH AND NEGLIGENCE.

Typical Question
ACEC GC 14.10 says that each party will indemnify the other party for damages and costs resulting from 3rd party claims, breach and negligence. Why do most clients decline to indemnify the consulting engineer?

Owen Pawson's and Steve Panciuk's Response
Mutual indemnity may be a reasonable request, although clients are typically reluctant to embrace reciprocity given that most of the risk in an engineer-client agreement will come as a result of the engineer's services.

The client really has few obligations under an agreement with its engineer for which a 3rd party claim may result. However a client may be liable to the engineer for damages or losses suffered by a 3rd party as a result off contractual faults committed by other project participants for whom the client is responsible. These would include contractual faults committed by a contractor or an architect or another engineer hired by the client. So indirectly or vicariously, the client may have obligations for which it should indemnify the engineer. The point here is that the engineer agrees to indemnify and save harmless the client against losses, claims, damages, and actions that the client may sustain that arise out of errors, omissions or negligent acts of the engineer. That said, an engineer's response could be – well then, if there is little risk, reciprocal indemnity clauses should present no problem for you as the client (including an indemnity for the actions of parties for whom you are responsible)!

But note - it should be clear that the engineer's indemnity should not apply where claims are the result of actions, errors, omissions or the negligent acts of the client and, if the indemnity is truly reciprocal, the client should not have to indemnify the engineer for claims that result from actions, errors, omissions or the negligent acts of the engineer. That is why we see the words "to the extent of the fault or negligence of the indemnifying party" in GC 14.10 – a clause intended to clarify that a party does not have to indemnify the other party against a 3rd party claim if the indemnifying party is clearly at fault.

Finally, public owners may have legislation that does not enable them to offer indemnities except with approval from a minister, risk management branch, or cabinet. Accordingly, approval for a reciprocal indemnity from a public owner can be problematic and time-consuming to obtain and may not be worth insisting upon unless it is a major project.
JCC/