



ASSOCIATION OF CONSULTING
ENGINEERING COMPANIES
PRINCE EDWARD ISLAND

RE: Indemnification Creep

Dear ACEC-PEI Members,

In recent years, ACEC-PEI has witnessed an increasing number of RFPs that contain indemnification clauses that increase the risk and liability to consulting engineers.

Many RFPs and contracts contain indemnification clauses that require the consultant (insured) to indemnify and hold harmless the client against all claims resulting from their services. Such indemnification clauses are usually beyond the scope of professional liability insurance policies. Typically, professional liability insurance policies provide coverage for the engineer's (insured's) legal liability for damages arising from an error, omission or negligent act in the rendering of professional services and subsequently may not respond to all damages, liabilities or costs.

Any provision that requires a design professional to indemnify beyond damages directly resulting from error, omission or negligence while rendering professional services represents a risk to the engineer (insured) that may be beyond his/her normal legal liability and outside the scope of his/her professional liability insurance coverage.

Professional liability insurance exists to provide protection from claims caused to a party by the engineer's negligence in the performance of professional services; indemnification requirements that exceed professional liability coverage represent a risk that may not be insurable. Agreeing to uninsurable terms in a contract can place an ACEC-PEI member at an unsustainable business risk and is potentially harmful to the public interest.

ACEC-PEI advises its members that it is essential to obtain independent legal and insurance advice when confronted by these types of contract clauses outlined in RFPs and contracts and be guided by this advice to derive appropriate, insurable and professionally responsible contract language in their agreements.

There are a number of standard form agreements that serve as models of equitable and balanced contract language. ACEC-PEI endorses the use of the ACEC-Canada Document No. 31, which can be found on our website at <http://www.acecpei.ca/files/pdf/ACEC%2031-2010.pdf>.

Sincerely,

Christy Cunningham, P. Geo
Executive Director, ACEC-PEI