

# National Secondary Professional Liability Insurance Program

## Questions & Answers

**March 2010**

**Note to Members:** Effective March 31, 2009, the policy has a new enhancement which extends the reporting period for claims for 60 days after the end of the annual policy term, which is March 31<sup>st</sup> of each year. As this is a “claims made policy” when you become aware of a claim or circumstance in a particular policy year, you must report this matter to Insurers in that same policy year. This additional 60 day enhancement has been added at no additional cost to members.

**Q. Why was this program set up?**

- A. As professionals, engineers and geoscientists take responsibility for their work. If their work subsequently fails, they may be held legally liable (personally) for any resulting costs or damages. Unless they have ample professional liability insurance they may be forced to pay thousands of dollars in damages and legal fees from their own pockets.

Many engineers and geoscientists have insurance coverage, either through their employers or their own policies, to cover most risks. This is especially true for those engineers and geoscientists in the Consulting field. On the other hand, many employed engineers or geoscientists in fields other than consulting do not always appreciate the need for coverage distinct from that provided by their employer, under, say a General Liability policy. There are many situations where these engineers or geoscientists need to call upon additional professional liability insurance.

For many years, the Ordre des Ingénieurs du Québec has provided this type of program to its members to meet the requirements of the amended Engineers Act. A few years ago other provincial engineering Associations perceived a need for this type of insurance and as a result this program was set up in 2002.

Your professional Association has determined that in protecting individual members, this coverage promotes and enhances the value of the engineering and geoscience profession and its service to the general public. Participation by all members of the Association ensures the program’s existence and spreads the overall potential exposure and direct cost so that individual premiums are as low as possible.

**Q. Do I need to arrange with my broker to buy this coverage?**

A. No. As a member of good standing in your Association, you will automatically be enrolled in the program.

**Q. Who is an Insured?**

A. All members in good standing of the Provincial/Territorial Associations participating in this program are insured. These are NAPEG, APEGBC, APEGGA, APEGS, APEGM, OIQ, APEGNB, APENS, APEPEI, APEY, APGO, OGQ and PEGNL. The policy does not cover firms.

**Q. What type of insurance does this program provide?**

A. This program provides insurance for your individual liability arising out of professional services that you may provide.

**Q. What insurance do I have if I am an “employer”, “principal” or another “decision maker” in a firm or another entity?**

A. Let's deal with this under two distinct categories:

- 1) If you are a sole proprietor or a decision maker in a firm that is engaged in providing standalone engineering or geoscience consulting services, you as a decision maker are not insured for those services. A “decision maker” is any director, officer or sole proprietor of an entity, or, any associate or shareholder who holds more than 10% of the shares of an entity or shares issued that include voting rights of an entity.
- 2) If you are a decision maker in a non consulting firm or another entity that constructs, manufactures, installs, fabricates, or engages in some other activity, you as a decision maker are not insured for those services, with one exception. The policy will respond where you had a role as a designer in the product produced by your firm and a claim relates specifically to that design.

As mentioned before there is never coverage under this program for the firm, company or entity itself.

**Q. What insurance protection do I have if I am an employee in a firm or some other entity?**

A. While you are an employee for an engineering or geoscience consulting firm, you are not insured under this program for the professional services you provide. Any liability you may incur in providing these services to, or on behalf of your employer should be protected under conventional professional liability insurance available in the marketplace.

While you are an employee for a non consulting firm or another entity, you are insured for the professional services you perform in the course of that employment.

**Q. When I change employment, do I have insurance protection for the professional services I provided to my past employer?**

A. Yes, as long as you are not a decision maker of a engineering or geoscience consulting firm. If you are decision maker of a non consulting firm or another entity, you only have insurance protection for design as described above.

**Q. What protection do I have if my firm ceases operation or goes bankrupt?**

A. You will have insurance protection for your past work for the defunct or bankrupt firm as long as you are not a decision maker of an engineering or geoscience consulting firm. Your insurance protection if you are a decision maker of a non engineering or geoscience consulting firm or entity would be for design only as described above. If you are a decision maker of an engineering or geoscience consulting firm, some restrictions apply before you receive insurance protection. These restrictions are explained later in this document.

**Q. Do I have insurance protection for my past work if I retire?**

A. Yes, as long as you are a member in good standing with a participating Association. Also, certain restrictions pertain to decision makers as explained below.

**Q. Do I have insurance protection for professional activities that I may engage in when I am retired?**

A. Yes but only for the performance of those services allowed by your Association for retired members or for gratuitous advice you may give. Compensation received for any one project while providing such services must have a value of less than \$2,000 and the total value that you receive for all such projects must not exceed \$10,000 in any one calendar year.

**Q. If I provide professional consulting services, what coverage do I have?**

A. As a principal of a firm or an employee of a firm, this program does not provide protection when you provide engineering or geoscientist services to another person or firm as a consultant. Protection for that type of activity is provided by another type of insurance and needs to be purchased separately by those who provide those services.

If you provide engineering or geoscience services to a firm as an employee, you have protection as long as the firm is not in the business of providing those services as separate stand alone services to others. Those services, are in fact consulting services for which separate insurance should be purchased.

An exception to this general rule has been made for those individuals who have regular employment and who decide to provide consulting services outside of their regular employment activities. The consulting services must be provided by the individual and not in a company name. The reason for this is that the program does not provide protection to companies. The protection provided by the program to individuals for this consulting activity is intended for small jobs only. In order to qualify for protection by the program, the fees earned for such activity must be less than \$2000 per project and not more than \$10,000 per calendar year.

**Q. Is a Member in training considered as an Insured?**

A. Yes.

**Q. Am I covered for mentoring?**

A. Yes.

**Q. The Insurance Policy is termed as being on a “Claims Made Basis”. What does this mean?**

A. This means that both the “Claim” as defined in the policy and the report of that claim by the insured individual to the Insurance Company (XL Insurance Company Limited) must be made within the current policy period. The policy period ends on March 31<sup>st</sup> of each year. Furthermore, it is a condition that the reporting of the “claim” be undertaken as soon as the insured is aware of it. Claims should be reported by March 31<sup>st</sup>, however, the policy has an extended reporting period of 60 days to report matters from the previous year.

A practical example would be where an engineer provided professional services 5 years ago. Damage to the building involved is only now apparent and the building owner demands that the engineer rectify the damage.

The trigger for the policy is when the demand or “claim” was first made against the engineer, not specifically when the engineer performed the work.

**Q. There are restrictions in this program relating to individuals who are “Decision Makers” in a firm. Why is that?**

A. Decision makers hold senior positions that involve both administrative and business duties in a firm. This program is not meant to provide insurance protection for those non engineering or geoscience duties.

**Q. What happens if I am a decision maker and my company goes bankrupt or ceases to operate?**

A. If you are a decision maker of a consulting engineering or geosciences service firm, the policy excludes claims against you during the first six month period following the entry into receivership or bankruptcy of that firm, or during a two year period following the closure and cessation of operations of that consulting firm.

If you are a decision maker of a non consulting firm or entity, you will have continuous insurance protection for your design activities as described previously.

**Q. What happens if I as a decision maker retire and the consulting engineering firm with whom I was employed continues to operate? Do I as a retiree have insurance protection from this program following the expiration of a two year period after retiring?"**

A. No. If the firm remains in operation after you retire, you should require that the firm provide continuing coverage post-retirement, as this program will not provide coverage. If the firm is no longer in operation (either cessation of operations, bankruptcy etc.) then you, the retiree will receive insurance protection once the appropriate waiting periods have elapsed (six months following the entry into receivership or bankruptcy, or two years following the closure and cessation of operations).

**Q. There is an exclusion in this program relating to other insurance. Can you explain why the exclusion exists even if the "claim" is not covered in whole or in part by the other policy?**

A. This policy is not meant to substitute for nor operate in addition to other insurance which is or should be in place. There may be efforts by Plaintiffs to gain access to this policy as another source of revenue for problems that have exhausted other coverage, problems that were excluded under that other coverage, or problems that may have nothing to do with the intention of coverage by this policy.

**Q. A new exclusion pertaining to mould was added to the policy in 2003. Can you explain the reason for that?**

A. You will find that almost all insurance policies contain an exclusion pertaining to damage caused by mould. Although mould is everywhere around us and has been since the beginning of time, it has only recently been identified as a health issue. The science on mould is in the developing stage. As this science evolves, there will be plaintiffs who will want to take full advantage of any funds that might be available to pay for damages, real or imagined caused by the presence of mould. As other insurance coverage for mould disappears, it is not prudent for your policy to be the only one available to pay for such claims. In the future, after society has sorted out the real effects of mould and how such effects should be dealt with, insurance companies will be in a better position to decide what coverage can be provided for such claims.

**Q. Where can I get additional information?**

A. There is a toll free number 800-361-9080 set up for enquiries in all provinces except Quebec. The number in Quebec is 800-665-3742. In addition, your association office has a copy of the Policy and can provide a copy at your request. Many participating Associations have posted a copy of the Policy on their website.

**Q. How do I report a claim and to Whom?**

A. For immediate verbal notice of the claim, telephone the Insurers claims dept 416-363-2914 or toll free on 1-800-665-2222. Also, by calling this number you can request a CLAIMS REPORT FORM. Fax this directly to the Insurer at 416-363-8038.

**Please feel free to forward any additional questions by calling 1 (800) 361-9080. Also, please remember that these Q&A are intended to help you in understanding the program. The Master Insurance Policy contains terms and conditions that determine how and when the Insurance coverage applies and nothing in this Q&A document is intended to or will override alter or eliminate the specific wording of that Master Policy.**

# **Programme national d'assurance responsabilité professionnelle secondaire**

## **Questions et Réponses**

**mars 2010**

**AVIS AUX MEMBRES ;** Prenant effet le 31 mars 2009, cette police est améliorée en prolongeant le délai d'avis des réclamations pour une période de 60 jours après l'expiration de la durée annuelle du contrat, soit le 31 mars de chaque année. Puisqu'il s'agit d'une police d'assurance applicable aux sinistres survenus et déclarés, lorsque vous êtes au courant d'un sinistre ou de circonstances pouvant donner lieu à une réclamation contre vous durant l'année de la police, vous devez en donner avis à l'Assureur dans la même année. Cette amélioration résultant de la prorogation du délai d'avis fut ajoutée sans frais additionnels aux membres.

**Q. Pourquoi le programme fut-il créé ?**

R. En tant que professionnels, les ingénieurs et les géoscientifiques assument la responsabilité de leurs travaux. Si leurs travaux s'avèrent défectueux, ils peuvent être tenus légalement (personnellement) responsables des frais ou des dommages qui en résultent. À moins d'avoir une assurance responsabilité professionnelle adéquate, ils peuvent devoir payer de leur poche des milliers de dollars en dommages et en frais légaux.

Plusieurs ingénieurs et géoscientifiques possèdent une garantie d'assurance couvrant la plupart des risques, par l'entremise de leur employeur ou par leur propre police d'assurance. Ceci s'applique particulièrement aux ingénieurs et géoscientifiques qui oeuvrent dans le domaine de la consultation. Cependant, plusieurs ingénieurs et géoscientifiques employés dans des domaines autres que la consultation ne voient pas toujours la nécessité d'une garantie d'assurance distincte de celle fournie par leur employeur, telle une police de responsabilité générale. Il existe de nombreuses situations où ces ingénieurs et géoscientifiques doivent posséder une assurance responsabilité professionnelle supplémentaire.

Depuis plusieurs années, l'Ordre des Ingénieurs du Québec fournit ce type de programme à ses membres pour satisfaire aux exigences de la *Loi sur les Ingénieurs* dans sa version modifiée. Il y a quelques années, d'autres associations provinciales d'ingénieurs sentirent un besoin pour ce type d'assurance et la création de ce programme en 2002 en fut le résultat.

Votre association professionnelle a jugé qu'en assurant ses membres individuellement, cette garantie d'assurance fait la promotion et met en valeur les professions d'ingénieurs et de géoscientifiques, et ses services au public. La participation de tous les membres de l'association assure la survie du programme tout en répartissant l'ensemble des engagements possibles et les coûts directs, afin que les primes individuelles soient le moins élevées possible.

**Q. Dois-je faire affaire avec mon courtier pour me procurer cette garantie d'assurance ?**

R. Non. En tant que membre en règle de votre association, vous serez automatiquement inscrit.

**Q. Qui est assuré ?**

R. Tous les membres en règle des associations provinciales et territoriales qui participent au programme sont assurés. Il y a la NAPEG, l'APEGBC, l'APEGGA, l'APEGS, l'APEGM, l'OIQ, l'APEGNB, l'APENS, l'APEPEI, l'APEY, l'APGO, l'OGQ et l'PEGNL. La police ne couvre pas les firmes.

**Q. Quel type d'assurance le programme fournit-il ?**

R. Le programme fournit une assurance pour votre responsabilité individuelle découlant de services professionnels que vous pouvez rendre.

**Q. Quelle assurance ai-je si je suis « employeur », « chef de groupe » ou autre « décideur » dans une firme ou une autre entreprise ?**

R. Traitons cette question en deux catégories distinctes :

1) Si vous êtes propriétaire unique ou décideur dans une firme qui s'engage à fournir des services indépendants de consultation en ingénierie ou en géoscience, vous-même, en tant que décideur, n'êtes pas assuré pour ces services. Un « décideur » est tout administrateur, cadre ou propriétaire unique d'une entreprise, ou tout associé ou actionnaire détenant plus de 10 % des actions d'une entreprise ou des actions émises avec droit de vote d'une entreprise.

2) Si vous êtes un décideur dans une firme autre qu'une firme d'experts-conseils ou dans une autre entreprise qui construit, manufacture, installe, fabrique ou s'engage dans d'autres activités, vous-même en tant que décideur, sauf une exception, n'êtes pas assuré pour ces services. La garantie d'assurance s'appliquera si vous avez été concepteur du produit fabriqué par votre firme et s'il s'agit d'une réclamation spécifique se rapportant à cette conception.

