

Engineers and Architects

For the convenience of readers interested only in issues relating to design consultants we provide this information about the duty and standard of care owed by engineers and architects. For info about the duty and standard of care to be met by professionals generally, including engineers and architects, click on "More" to the right or on the Professional Indemnity web page.

Professional Duty of Care

Architects and engineers in the building trade owe a duty of care to the owner of a building project even if the owner is not their client and they have no contractual relationship with the owner. For example, a sub-consultant who was hired by the overall design consultant can be liable in negligence to the owner. If the design consultant hired the sub-consultant on behalf of the owner, then the sub-consultant could be liable to the owner in contract as well.

An engineer or architect hired by a contractor, could also be liable to the contractor, in contract or negligence, for faulty work or advice. If the engineer or architect does not have a contractual relationship with the contractor, a duty of care may still be owed. For example, in *Edgeworth Construction Ltd v. N. D. Lea & Associates*, the Supreme Court of Canada allowed a contractor to recover damages from engineers who negligently produced deficient design specifications that the contractor relied upon when tendering for a highway construction project. The court reasoned that the engineers in that case should have expected that the contractor might be harmed if the design specs were wrong.

While a design consultant may owe a duty of care to a contractor, that professional will likely only be liable for negligent misrepresentation if the contractor relies on the design specs for a purpose that the design consultant could reasonably have expected. In *Auto Concrete Curb Ltd. v. South Nation River Conservation Authority*, the Supreme Court of Canada decided that a contractor could not recover damages from an engineer who did not warn of the need to obtain permits required for a dredging operation. The permits were required because the contractor decided to use a suction dredging method to complete the project. The court stated that the engineer did not accept responsibility for advising the contractor about the particular dredging method used.

The courts have treated safety concerns as a special consideration which affects the duty that architects and engineers owe to future owners and users of a building or structure. As a result, the courts have held engineers and architects liable to compensate people who are injured in an accident caused by a design failure even though no one could reasonably have foreseen injury to that specific individual, or even the general nature of the event causing the injury. This same broad duty has been applied to pure economic loss where there is a safety issue. For example, in 1995, the Supreme Court decided in the case of *Winnipeg Condominium Corp. No. 36 v. Bird Construction Co.* that a subsequent owner of a building may be able to recover from a

general contractor for the cost of fixing dangerous design defects in a building. However, a subsequent owner who pays to fix a design defect that does not create a risk of hurting somebody likely cannot recover the repair costs from the design consultant.

Professional Standard of Care

A common standard of care applies both to engineers in the construction industry and to architects. An architect or engineer owes a duty to exercise the skill, care and diligence which may reasonably be expected of a person of ordinary competence, measured by the professional standards of the time. In the case of a claim based in contract rather than negligence, a higher standard will be applied if the contract terms expressly require that a higher standard be met. As well, architects and engineers who represent that they possesses special skills may be held to an elevated standard. An architect or engineer is required to inform himself of current scientific or technical knowledge bearing on a project. If an architect or engineer is aware that the design of a project entails risk, that professional may owe the client a duty to warn of the risk.

However, architects and engineers generally are not taken to have guaranteed perfect, or even successful results, provided they have exercised reasonable judgement, competence and diligence. It will usually be a sufficient defence to establish that the work performed was consistent with generally accepted practice, or with formal standards established by industry and professional associations. However, if the court were to find that an accepted practice or a formal standard was inadequate, it could hold the professional liable even if the work was performed to a standard consistent with that of the professional's peers.

If an architect or engineer does not possess the specialized knowledge required to complete a particular aspect of the project, then he should obtain advice from a specialist. An architect or engineer who delegates work to a competent sub-consultant will generally not be liable for an error by the sub-consultant unless some contractual term imposes liability for the sub-consultant's work.

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