



**ACEC**  
BRITISH COLUMBIA

# Position Paper Claims Against Individuals

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### **ACEC-BC Position Paper**

Position Papers are articles developed by ACEC-BC Committees and published for use by consulting engineering companies as a general resource. The information provided highlights relevant issues and practices for the industry and should not be construed as legal advice.

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## Claims Against Individuals

Note: This is an update to the original released in August 2010.

While a client contracts with a consulting engineering firm rather than the firm's individual employees, the courts in British Columbia have held that employee engineers who actually carry out the services may individually owe a duty of care to the client and may be personally liable if those services are negligently performed. The British Columbia Supreme Court<sup>1</sup> described its view on this issue as follows:

*"It cannot be plausibly argued that a limited company purporting to offer professional services of "consulting engineers" and indicating that its employees have special skill and experience is not inducing its clients to rely on those individuals' expertise."*

In this decision, the Court additionally noted that "it is open to a limited company to limit its and its employees' exposure in tort by appropriate contract language. No such language was brought to my attention here."

The principles applied by the British Columbia Supreme Court in this decision have been similarly adopted and applied by Courts in other Provinces<sup>2</sup>. As a result of this, consulting firms in Canada should take steps to protect the personal liability of their employee engineers. It is recommended that all members incorporate a term in their client agreements that specifically exclude employees (and others providing services for the company) from liability to the client<sup>3</sup>.

A standard clause for exclusion of claims against individuals developed by ACEC British Columbia reads as follows:

*"Where the Consultant is a corporation or partnership, the Owner and Other Consultants shall bring any claims solely against the corporation or partnership and waive any right to pursue claims against any individual professional, including its officers, directors, employees, or agents, who shall have no personal liability whatsoever."*

The Canadian Construction Documents Committee Service Contract between Owner and Consultant 2020<sup>4</sup>, GC 6.2.7 also includes a clause for exclusion of claims against individuals.

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<sup>1</sup> *Strata Plan VR1720 v. Bart Development Ltd.* 1999 CanLII 5428 (BCSC) relying upon the British Columbia Court of Appeal's decision in *Boss Developments Ltd. v. Quality Air Management Ltd.* 1995 CanLII 3213 (BCCA)

<sup>2</sup> See *Advanced Process Solutions Inc. v. Delta-T Canada Corp* 2011 SKCA 92 and *Hollowcore v. Visocchi* 2014 ONSC 6802 (On SC)

<sup>3</sup> In some circumstances, where a consultant has been individually named in a claim and where the employer firm maintains professional liability insurance, some claimants have demonstrated a willingness to release the individual consultant from the claim and restrict such claim to the employer firm.

<sup>4</sup> CCDC 31 – 2020 Service Contract Between Owner and Consultant. <https://www.ccdc.org/document/ccdc31/>