

Reciprocal News

Helping to Manage Your Risk

The MEARIE Group's Reciprocal Newsletter

A publication designed for the benefit of Ontario's Energy Industry.

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Malpractice Claims: Are Utilities Vulnerable?

Can utilities be brought into a legal suit for "Professional Services?" The answer is a highly probable YES.

Recent cases employ the following test to determine if an activity is a professional service: "Is it a service that embraces both a mental or intellectual exercise within a recognized discipline and the application of special skills, knowledge and training to the particular function in question?" Lawyers, doctors, dentists, beauticians, opticians, meeting planners, consultants, association managers and members, real estate agents and insurance brokers, to name only a few, fall within the term "Professional". Several other occupations likely meet the definition as well. Association executives quite often have a "professional background". As a matter of fact, it is this professional experience that in many ways is required or desired by the association to deal with matters of their "profession".

Take the example of an association executive who is also an engineer, and who is involved in setting up a professional development seminar, a referral service, or writing an article that gives his/her professional opinion.

One would think that his/her personal Errors & Omissions policy would cover any errors and or omissions he/she was to make. Maybe so, or at least in part. The question remains: what role did the association and/or other executives play

in the activities causing the action? After all, the association is involved and perhaps other executives - every one of them could easily be drawn into a lawsuit.

Issues arising from Professional Liability are of great concern for both the professional and the customer. Times have changed and professionals are now a target of many legal suits. Today, the public and our legal system expect much more from professionals and are much more inclined to initiate a lawsuit. When adjudicating cases, the courts have based their judgments on an increasingly higher standard of care and responsibility.

This higher accountability can be overwhelming and even frightening for many. To think that you are responsible for every action you do or fail to do, or allegedly did or failed to do, and that any error, however innocent, could bring severe or negative consequences, is quite unnerving. Members should be aware that coverage under the MEARIE liability policy covers Errors & Omissions of the named insured for operations normally covered by the policy and includes Professional Liability.



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