

## **PLIC/ENCON Terms of Reference for participation in Claims Meetings**

Although consumers tend to measure and compare insurance policies by the amount of their premium, the true measure of an insurance policy is how the insurer manages the claims. The CCLS Professional Liability Insurance program is unique in that a committee of land surveyors have the opportunity to participate in the claims process.

This arrangement is beneficial to both the insureds and the insurer. Both parties bring a mix of expertise and experience that ensures each claim is handled in a manner that is acceptable to both professions.

Essentially, from an insurance perspective, claims should be dispatched for the least amount of dollars. While CCLS would not disagree entirely with this logic, it is imperative that liability be clearly established before a claim settlement is considered. Primarily, it is for this reason that CCLS insists on participating in the claims process.

Professional negligence has been broadly defined by the courts as any act, or omission of any act, that a prudent professional person would or would not do, as the case may be.

To prove liability, the courts apply the ABC rule to determine negligence:

- A. Did the insured owe a duty to the claimant?
- B. Did the insured breach that duty?
- C. Did the claimant suffer damages because of that breach of duty?

Once liability has been established, there are other things that come into play, in particular; did anyone else, including the claimant, contribute to the damages? How best to mitigate the loss and settle the claim?

These issues of liability and negligence are the issues with which the PLIC are concerned during their discussions of claims with ENCON. Apart from a general interest in the overall efficiency of the program, the PLIC should not concern itself with the setting of reserves or the collection of deductibles. These matters are appropriately left to the insurer.