

PROFESSIONAL EXCLUSIONS

INTRODUCTION

The [Labour Relations Code](#) states that workers in certain professions are not considered employees for the purposes of the statute. Section 1(l) of the [Code](#) says:

(1)(l) "employee" means a person employed to do work who is in receipt of or entitled to wages, but does not include

(ii) a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of Alberta and employed in his professional capacity.

These professional employees can neither organize for collective bargaining purposes nor can they be in a bargaining unit with other non-professional employees. This policy explains the rationale for this exclusion and discusses how the Board applies it.

PURPOSE

The [Code](#) excludes the five “core” or traditional professions recognized when legislatures first enacted these statutory exclusions. In these professions,

- most members are self-employed, not salaried employees;
- members enjoy a statutory monopoly over provision of their services;
- members subscribe to a professional code of ethics; and
- members are controlled by professional governing bodies charged with protecting the interests of the public.

There are several reasons why Alberta excluded these professionals from its labour relations statute. Collective bargaining raised the prospect of a concerted withdrawal of professional services. Legislatures viewed collective bargaining and union loyalty as inconsistent with protection of the public and control by a professional governing body. They considered professionals to have no community of interest with the non-professional employees who would dominate larger bargaining units. Many professionals who were not self-employed were managers or employed in confidential capacities in any event. Finally, there was little or no interest inside these professions for collective representation.

APPLICATION

The professional exclusion applies only to professionals who are *employees*. Self-employed professionals are excluded from the [Labour Relations Code](#) in any event. For professionals who are employees, the professional exclusion operates only if three conditions exist:

1. They must be members of their profession. This means they must have membership in their professional governing body. These governing bodies are:
 - **Physicians:** the College of Physicians and Surgeons of Alberta;
 - **Lawyers:** the Law Society of Alberta;
 - **Engineers:** the Association of Professional Engineers, Geologists and Geophysicists of Alberta;
 - **Architects:** the Alberta Association of Architects; and
 - **Dentists:** the Alberta Dental Association.

2. They must qualify to practice their profession under the laws of Alberta. This requirement goes beyond the requirement of membership in the profession. Some professions offer classes of membership to persons who do not fully qualify to practice. Professionals-in-training like student medical interns may not meet this requirement of the professional exclusion because their professional legislation restricts the services they can provide. For one application of this requirement, see: [*Parkdale Community Legal Services* [1977] 2 Can. L.R.B.R. 542 (Ont. L.R.B.)].

3. Their employer must employ them in their professional capacity. For example, the Board will not exclude a fully-qualified engineer who does not provide engineering services to the employer but works in a maintenance job. Whether a qualified professional works in a professional capacity is a question of fact. Look to the “scope of practice” provision in the governing statute for help in deciding what “employed in a professional capacity” means. See:
 - **Architects:** [Architects Act](#) (RSA 2000), [Section 1\(l\)](#);
 - **Dentists:** [Dental Profession Act](#) (RSA 2000), [Section 1\(e\)](#);
 - **Physicians:** [Medical Profession Act](#) (RSA 2000), [Section 87\(1\)](#);
 - **Lawyers:** [Legal Profession Act](#) (RSA 2000), [Section 106](#); and
 - **Engineers:** [Engineering, Geological and Geophysical Profession Act](#) (RSA 2000), [Section 1\(q\)](#).