

SIX WAYS TO REDUCE RISK

In architectural practice, risk takes many forms. It's comforting to know that your Pro-Demnity policy protects you against the risks of error or unintentional neglect.

The policy spells out the many things that are covered, as well those that aren't. Bear in mind that a number of things aren't specifically mentioned, simply because they aren't responsibilities imposed by common law.¹

This is to say that, "A professional liability insurance policy is not an all-risk contract. It is rather a safety net, providing protective cover within specified limits."²

With this in mind, there are still many ways you can reduce your risks across the board. Here are six areas of particular concern highlighted in the recently published *Canadian Law of Architecture and Engineering, Third Edition*.³

Choosing the Project – Avoid those that may be problematic due to:

- Feasibility – write down any unrealistic aspects in the feasibility study – or decline the work.
- Client Resources – If the client's budget is unrealistic, tell them – or decline the work.
- Marginal Design Requirements – If a developer, e.g., cuts fees for design and supervision, but still wants all the certifications, be very cautious. Your liability may outlive your client.
- Self-Appraisal – Be sure that the project lies within your capabilities and experience.

Defining Responsibility – Establish roles at the beginning and maintain communications. For example:

- The client bears the responsibility to define its needs and objectives.
- The architect provides the design and assists the client in getting a project that conforms.
- The contractor is responsible for building the project.
- The architect must be allowed to provide review sufficient to confirm conformity. Otherwise include a clause relieving you of liability for poor workmanship or material substitutions – or decline the work.
- Make sure the client knows that additional consultants may be required; and that cost estimates are not guarantees.

- The architect is responsible for ensuring that its budget is sufficient to cover its services, quality assurance, and contingencies for unknowns.

The Contract – Leave nothing to chance; get everything in writing; use standard contract forms; avoid client-generated contracts which may obligate you to assume liabilities beyond your insurance coverage; familiarize yourself (as well as your employees and consultants) with the contents; refer to Pro-Demnity Bulletins for useful notwithstanding clauses.

Design and Specifications – Understand the risks of innovative design and make doubly sure your client understands them. Embrace new ideas, but remember that innovation often inspires litigation. Observe the following quality assurance practices:

- Always have another competent person check design calculations.
- Check that detail drawings conform to overall drawings.
- Consult specialists throughout the design process.
- Check design regularly against geotechnical reports.
- Be sure the specifications are clear and understandable.
- Be certain that your design accommodates maintenance requirements.

Communications – Must be continuous, honest and complete.

- Deal with tricky problems when they arise.
- Don't neglect interoffice, interdisciplinary and – especially – client communications.
- Keep written records, as well as: (i) manufacturers' warranties and specs; (ii) jobsite reviews; (iii) memos and change orders; (iv) notes of conversations and written confirmation of oral – especially rejected – advice; (v) deficiency lists and corrective steps; (vi) anything relating to substitutions; (vii) written advice to the client regarding covering of unexamined work; (viii) records of non-cooperation on the jobsite.

Certification – Undetected defects are normally covered by your policy, but may result in allegations of negligence. To avoid claims related to certification:

- Certify only what you have seen. Otherwise, warn the owner in writing that “restricted field services were rendered.” You may still be on the hook, but your warning will help your defence.
- When signing progress reports for a bonding company, include a disclaimer that the report should not be relied on as certification.

“[I]t is incumbent on all architects and engineers to familiarize themselves with the

areas in which claims are most frequently made, and with prudent practices for avoiding [such] claims.”⁴

These six areas of concern may seem obvious to a seasoned architect, but anyone might make a hurried or ill-considered decision resulting in needless expense of time and money, as well as unnecessary aggravation. More generally the rising number and severity of claims inevitably leads to higher PLI insurance premiums. As *Canadian Law of Architecture and Engineering, Third Edition* sternly advises,

It goes without saying that adopting prudent practices is in your best interests, as well as those of your client.

Notes:

1. *The Canadian Law of Architecture and Engineering*, Third Edition. McLachlin, Beverly M., Arthur M. Grant. Toronto: LexisNexis, 2020, 228
2. Op. cit. 226
3. Op. cit. 236 ff.
4. Op. Cit. footnotes, 235