

Dear Applicant:

The following documents relating to the application for annual practice insurance are attached

Guidelines and Application for annual practice insurance

**Please note** a one-time application fee and “PST” of \$270.00 is payable on submission of the completed application. The premium (“PST” applicable), which will be determined by Pro-Demnity Insurance Company (“the Company”) on receipt of the application, is payable upon issuance of a Certificate of Insurance and an invoice.

As you are aware, the Personal Information Protection and Electronic Documents Act (“Act”) applies to the Company effective January 1, 2004.

You will note that the Declaration on the last page of the application includes a consent to collection, use and disclosure of personal information by the Company for the purposes stated therein, in accordance with the “Act”.

Consent form (Canada’s Anti-Spam Legislation) to be completed and returned to us with the application

Policy No. 1 and Endorsements No. 1 and No. 2 thereto, together with a paper entitled “IMPORTANT NOTICE – Non-Drained Exterior Wall Exclusion & Window Wall Endorsements”

- ▶ Pro-Demnity Bulletin dated February, 2015 entitled "REPORTING A CLAIM".
- ▶ Questions and Answers regarding the Company.

The Company provides the OAA mandatory limits of liability for damages of \$250,000 each claim and \$500,000 per project and \$1,000,000 for all claims reported during the Period of Insurance. The Company has the ability to provide limits of liability of up to \$10,000,000. Should you wish to obtain a quotation on the required increased limits, please complete Question 16 of the application.

Alternatively, limits in excess of the OAA’s mandatory requirement of \$250,000 each claim may be purchased through the insurance industry (other than the Company). Please contact your insurance broker in this regard. To ensure that Applicants who require excess coverage have their mandatory and excess insurance take effect on the same day, application forms must be forwarded simultaneously to the Company and your broker.

\* \* \* \* \*

#### **IMPORTANT NOTICE**

WHERE AN OAA MEMBER/HOLDER OF CERTIFICATE OF PRACTICE IS CURRENTLY INSURED AND HE/SHE HAS KNOWLEDGE OF ANY CLAIM OR CIRCUMSTANCE OF ANY ERROR, OMISSION OR NEGLIGENT ACT WHICH ANY REASONABLE PERSON WOULD EXPECT TO SUBSEQUENTLY GIVE RISE TO A CLAIM, IT IS IMPERATIVE THAT HE/SHE REPORT SUCH CLAIM OR CIRCUMSTANCE TO HIS/HER EXISTING INSURER.

THE COMPANY WILL NOT PROVIDE COVERAGE WHERE A MEMBER/HOLDER HAD KNOWLEDGE, PRIOR TO THE PERIOD OF INSURANCE, OF SUCH CLAIM OR OF THE CIRCUMSTANCE, DISPUTE OR CONTROVERSY OUT OF WHICH IT ARISES.

2/2015

## Application for Annual Practice Insurance Holder of Certificate of Practice

Name of Holder

Address / Telephone / Facsimile numbers of Principal Office

☐

Application fee & PST(\$270.00) enclosed

All sections of the application form must be completed (Please print).  
Where sections do not apply use "Nil" or "Not required".

1. Applicant: Name of Holder of Certificate of Practice (See Guidelines).

1.1 Name of Principal to whom loss prevention material is to be addressed \_\_\_\_\_

E-mail address: \_\_\_\_\_

2. Name(s) of predecessor practice(s) of current practice for which coverage is required or practices in which a member(s) who is a sole proprietor or is a partner, officer, director, shareholder or employee of the holder requires coverage for professional services performed for a previous practice (See Guidelines).

3. If coverage is required for a practice management company, affiliated company, or a personal management company of the sole proprietor, or a partner, officer, director, shareholder or employee of the holder (See Guidelines), please provide name(s) of OAA member (In case of personal management company) and name(s) of the company(ies).

For affiliated company(ies), please complete the following:

Name of Company(ies)	Nature of Activity	Member who will personally supervise and direct activities of affiliated company(ies)	% fee income for services rendered to applicant	Fee income last 3 years			Anticipated fee income for next 12 months
				20____	20____	20____	
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$

4. Indicate number of:

Members of Association \_\_\_\_\_ Structural Professional Engineers \_\_\_\_\_ Technical Employees \_\_\_\_\_

Intern Architects \_\_\_\_\_ Mechanical & Electrical Professional Engineers \_\_\_\_\_ Other \_\_\_\_\_

5. Income (See Guidelines)

	Year 20____	Year 20____	Year 20____	Anticipated total gross fees for the next 12 months
<b>5.1</b> Total Gross Fees (As per annual financial statement).	\$	\$	\$	\$
<b>5.2</b> Fees for services performed by consultants retained by you. <b>DO NOT</b> include fees paid to other holders of Certificates of Practice insured by Pro-Demnity Insurance Company (See Guidelines).	\$	\$	\$	\$
<b>5.3</b> Reimbursable expenses (Only if included in line 5.1).	\$	\$	\$	\$

6. **Applicable ONLY to holders that are a holder of a certificate of authorization and require coverage for the performance of structural, mechanical and electrical professional engineering services in connection with a building.**

	Year 20 ____	Year 20 ____	Year 20 ____	Anticipated fees for the next 12 months
<b>6.1</b> Fees for <i>in-house</i> mechanical and electrical professional engineering services. (These fees <i>must</i> be included in line 5.1)	\$	\$	\$	\$
<b>6.2</b> Fees for <i>in-house</i> structural professional engineering services. (These fees <i>must</i> be included in line 5.1)	\$	\$	\$	\$

7. Of the Total Gross Fees declared in line 5.1, indicate the amount derived from:

	Year 20 ____	Year 20 ____	Year 20 ____	Anticipated fees for the next 12 months
<b>7.1</b> Feasibility studies, mortgage assessments, expert witness, renderings, or perspectives, and others as listed in the Guidelines, which are not included in lines 7.2 and 7.3	\$	\$	\$	\$
<b>7.2</b> Services provided to other holders of certificates of practice insured by Pro-Demnity Insurance Company, which are not included in lines 7.1 and 7.3	\$	\$	\$	\$
<b>7.3</b> Additional services for interior design which are not included in lines 7.1 and 7.2	\$	\$	\$	\$

8. Does any portion of the Total Gross Fees included in line 5.1 consist of salary or fees where your services relate to the utilizing of the staff, equipment or premises of the entity paying the salary or fees?

☐ Yes ☐ No

If "Yes", explain arrangements:


9. Do/will you request proof of professional liability insurance from consultants retained by you?

☐ Yes ☐ No

If "Yes", do you request:

**9.1** an endorsement requiring 60 days prior written notice of cancellation or modification of coverage? ☐ Yes ☐ No

**9.2** proof of renewal coverage of the insurance obtained from the consultants? ☐ Yes ☐ No

10. Indicate where 25% or more of the professional services performed during the last fiscal year were for one client or arose out of one client relationship.

☐ Yes ☐ No

If "Yes", please explain:


(Additional information may be required)

11. To the knowledge of the applicant, its predecessors in practice, or any of the partners, officers, directors, shareholders or employees, has any insurer in the past five years:

- a. declined any application for professional liability insurance? ☐ Yes ☐ No
- b. refused to renew any professional liability insurance? ☐ Yes ☐ No
- c. cancelled any professional liability insurance? ☐ Yes ☐ No

If "Yes", give full details in Question 13, or on a separate sheet.

12. Does the applicant, or any of its partners, officers, directors, shareholders or employees, or its practice management company, or affiliated company, or any personal management company(ies) of the sole proprietor applicant or any partner, officer, director, shareholder or employee of the applicant, have any knowledge or information of (See Guidelines)?

- a. any alleged error, omission or negligent act which might reasonably give rise to a claim? ☐ Yes ☐ No
- b. any claim made or threatened to be made in the past five years? ☐ Yes ☐ No
- c. any unresolved job dispute or circumstance which might reasonably give rise to a claim? ☐ Yes ☐ No
- d. having been called upon to make payment or to forego any claim for fees as a result of any job dispute during the past five years? ☐ Yes ☐ No

If "Yes", give full details in Question 13, or on a separate sheet.

13. Provide full details where the answers to Questions 11 and/or 12 are shown as "Yes":


(Use a separate sheet where necessary)

14. Have all matters answered "Yes" in Question 12 been reported to the previous insurer? ☐ Yes ☐ No

If "No", provide details:


15. Applicable **ONLY** to holders with total gross fees in excess of \$250,001 as shown in line 5.1 above for the last financial year, or, if none, anticipated for the next 12 months.

**Deductible available** (See Guidelines for schedule of maximum deductibles and premium credits).

- ☐ \$ 5,000      ☐ \$ 10,000      ☐ \$ 25,000  
☐ \$ 50,000      ☐ \$ 75,000      ☐ \$ 100,000

16. Applicable **ONLY** to holders that wish to obtain a quotation to purchase increased limits of liability **ABOVE** the mandatory requirement which is available on a discretionary basis.

(See Guidelines)

16.1 Indicate claim limit required:

- ☐ \$500,000      ☐ \$1,000,000      ☐ \$2,000,000  
☐ \$3,000,000      ☐ \$4,000,000      ☐ \$5,000,000

16.2 Do you require coverage for:

- .1 Full pollution coverage (**Other than the USA**)? ☐ Yes ☐ No  
(Completion of a Pollution Addendum required)

- .2 Other (Please specify): \_\_\_\_\_ ☐ Yes ☐ No

(If "Yes", additional information will be requested of you depending on the coverage required)

- 16.3 Indicate percentage of fees for last financial year, or anticipated percentage for the next 12 months in case of a new practice, and the number of projects relating to:

(Please indicate where 0% / "Nil")

	% Fees	Number of projects
.1 Office(s) situate in Ontario for projects:		
<input type="checkbox"/> In the U.S.A.		
<input type="checkbox"/> Other countries (Please specify): _____		
.2 Office(s) situate in other provinces of Canada		
.3 Office(s) situate outside of Canada, <b>other than the U.S.A.</b>		
.4 Office(s) situate in the U.S.A.		

(Additional information may be required)

**16.4** Is coverage required for:

**.1** Claims made and proceedings instituted in:

the U.S.A.?

☐ Yes ☐ No

other foreign jurisdiction?

☐ Yes ☐ No

**.2** Office(s) situate in other provinces of Canada?

☐ Yes ☐ No

**.3** Office(s) situate outside of Canada, ***other than the U.S.A.***?

☐ Yes ☐ No

**.4** Office(s) situate in the U.S.A.?

☐ Yes ☐ No

**.5** Other persons or entities?

☐ Yes ☐ No

(Please specify): \_\_\_\_\_

\_\_\_\_\_

**.6** Services "not usual or customary" for a holder of a Certificate of Practice?

☐ Yes ☐ No

(If "Yes" to 16.4.5 or 16.4.6, additional information will be requested of you depending on the coverage required)

**16.5** Total construction values : Last fiscal year \$ \_\_\_\_\_ Anticipated for next fiscal year \$ \_\_\_\_\_

**16.6** Indicate percentage of fees for last financial year derived from: % fees

**.1** Residential (Single dwelling units)

\_\_\_\_\_

**.2** Residential (Multi dwelling units)

\_\_\_\_\_

**.3** Assembly

\_\_\_\_\_

**.4** Business & personal services

\_\_\_\_\_

**.5** Mercantile

\_\_\_\_\_

**.6** Industrial

\_\_\_\_\_

**.7** Institutional

\_\_\_\_\_

**.8** Other (Please describe): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

100%

**.9** Has there been any significant change in these percentages over the last 3 years? ☐ Yes ☐ No

If "Yes", please explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**16.7** List the 5 largest projects over the last 5 years:

Name / Location of Projects	Type of Project	Number of Storeys	Total Fees \$	Total Construction Value \$	Your Portion of the total fees %
<b>.1</b>					
<b>.2</b>					
<b>.3</b>					
<b>.4</b>					
<b>.5</b>					

(Use a separate sheet where necessary)

**17. Applicable ONLY to holders that purchase ANNUAL PRACTICE EXCESS INSURANCE.**

**17.1** Do you purchase annual practice excess insurance through the insurance industry  
(*Other than* Pro-Demnity Insurance Company)? ☐ Yes ☐ No

If "Yes", indicate the amount:

\$250,000 in excess of the mandatory limit of \$250,000 each claim ☐

\$750,000 in excess of the mandatory limit of \$250,000 each claim ☐

\$1,000,000 in excess of the mandatory limit of \$250,000 each claim ☐

Other amount: ☐

(Please specify): \_\_\_\_\_

Please specify name of insurer: \_\_\_\_\_

**DECLARATION**

I/We, \_\_\_\_\_, do hereby (jointly and severally)  
Print Name of Applicant

certify that the facts set out in this application together with any addendum hereto or other written materials submitted in connection herewith (collectively, the "Application") are true and correct in every particular to the best of my (our) knowledge and belief, and that all particulars which may have a bearing upon the assessment of the practice as a professional liability risk have been revealed. I/We understand that this Application shall form the basis of the contract.

I/We further (jointly and severally) agree that, if in the time between the submission of this Application and the date coverage **is effected**, I/we become aware of any information which would change the answers furnished in this Application, such information shall be revealed forthwith in writing to the President of Pro-Demnity Insurance Company.

**I/We HEREBY** consent on behalf of all individuals who are present or former officers, directors, employees and shareholders, to the collection, use and disclosure of personal information by Pro-Demnity for the purpose of communicating with you, underwriting, evaluating and rating risks, establishing premiums and deductibles, investigating or paying claims, risk-sharing with reinsurance and excess insurance companies and any other insurance matters, protecting against and preventing fraud, compiling statistics, undertaking any activity under current law and in complying with applicable law in accordance with the Personal Information Protection And Electronic Documents Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant



GUIDELINES FOR COMPLETION OF  
APPLICATION FOR ANNUAL PRACTICE INSURANCE PROVIDED BY  
PRO-DEMNITY INSURANCE COMPANY  
Holder of Certificate of Practice

**APPLICATION FEE:**

The application fee is a one-time opening charge of \$250.00 payable by Holders on Application for Insurance.

Your cheque in the amount of \$270.00 (incl. "PST") made payable to Pro-Demnity Insurance Company, must be attached to the application form and sent to Pro-Demnity Insurance Company.

**Question #1**

The name entered shall be the name shown on the Certificate of Practice. Where more than one holder of a current Certificate of Practice is to be insured, the name of each holder must be listed in Question #1.

**Question #2**

For predecessor practice(s), these are the names shown on your previous Certificates of Practice or Memoranda of Practice. *COVERAGE WILL NOT BE PROVIDED to practices not listed.*

For liability as the sole proprietor, or as a partner, officer, director or shareholder of a previous practice, which is not a predecessor of the current practice, *NO COVERAGE* will be provided unless Question #2 is completed indicating the names of the members of the Ontario Association of Architects (OAA) involved and the name of the previous practice.

If coverage is not required, answer "not required".

**Question #3**

*A practice management company* means a company which manages the affairs of the practice.

*A personal management company* means a company which manages the affairs of the member of the OAA.

*An affiliated company* of a practice means a company which provides services to the practice i.e. interior design, planning, etc.

For any personal management or practice management company, the coverage offered is solely for claim(s) made against such companies arising out of an error, omission or negligent act in the performance of professional services for others *by the Holder of the Certificate of Practice.*

*NO COVERAGE is provided* for services rendered by the management company. The intention of this extension of coverage is to protect the management company in the event that it is included in an action against the Holder of the Certificate of Practice.

For any affiliated company, the coverage offered is solely for claims made against the *affiliated company* arising out of an error, omission or negligent act in the performance of *services to the Holder of the Certificate of Practice only*.

*NO COVERAGE is provided* for services rendered to others and *NO COVERAGE is provided* unless the activities of the affiliated company are under the personal supervision and direction of a member of the OAA.

Question #12 of the application form shall include any matters relating to personal management, practice management and affiliated companies.

Indicate clearly in Question #13, the matters, if any, involving such companies.

If coverage is not required, answer "not required".

#### **Question #4**

"Members of the Association" are OAA members who are partners, officers, directors, shareholders, associates and employees. "Technical" employees include architectural and engineering technologists and technicians, draftsmen, field personnel and specification writers. "Structural" and "mechanical & electrical professional engineers" include P.E.O. members who are partners, officers, directors, associates and employees.

#### **Question #5**

##### **GENERAL**

- Where more than one holder of a Certificate of Practice is covered, then the fees declared shall include the fees of all the holders as per their last financial statements for the last fiscal year.
- The Total Gross Fees shown in line 5.1 must include all fees and reimbursable expenses charged for services. This includes fees payable to all consultants for whom you are contractually liable.
- DO NOT include "GST" in your Total Gross Fees for the purpose of the premium calculation.
- Where reimbursable expenses are not included in the Total Gross Fees shown in line 5.1, do not include them in line 5.3.
- Where the current practice replaced a predecessor practice(s) in the last fiscal year, the fees of the predecessor practice(s) shall be included in Questions 5, 6 and 7 of the application. Ensure that the predecessor practice(s) is included as a named insured on the Certificate of Insurance, otherwise *NO COVERAGE* applies.

- Where a holder(s) who is a sole proprietor applicant or is a partner, officer, director, shareholder or employee of the applicant, is covered for participation in a predecessor practice, the portion of the fees from the predecessor practice for the last fiscal year shall be included in the fees declared in Questions 5, 6 and 7 of the application. Ensure that the former sole proprietor or partner is included as a named insured on the Certificate of Insurance for participation in the predecessor practice(s), otherwise *NO COVERAGE* applies.

- Although there may be fees paid by you to an affiliated company for services rendered solely to you, such fees may not be deducted from the Total Gross Fees declared in line 5.1. Where the affiliated company is not insured separately, insurance is available through Pro-Demnity Insurance Company for "services rendered to the holder". *NO COVERAGE* applies if the affiliated company is not shown on the Certificate of Insurance as a named insured.

**Line 5.1**

- The Total Gross Fees declared are as shown in the annual financial statement for the last fiscal year.

- The fees declared in lines 5.1 to 5.3 shall include all fees and reimbursable expenses charged for services as required by Ontario Regulation 27, R.R.O. 1990, as amended, subsection 47(2)(b)(i).

**Line 5.2**

- Fees for services performed by consultants for whom you are contractually responsible (i.e. not employed directly by others). **DO NOT** include fees paid to **other holders** of Certificates of Practice **insured by Pro-Demnity Insurance Company** (see Guideline 7.2).

To avoid double-charging of premium in respect of the same fees, no premium is charged on the premium of the holder that is providing consulting services to you. Should a letter be submitted by the consultant waiving their right to a credit of premium for the fees for services to you, the fees will be treated in the same manner as other consultants.

**Line 5.3**

- Reimbursable expenses include any expenses which are considered reimbursable expenses chargeable to the client and approved by the client. Among these are the cost of printing and reproductions, travel, communications and courier service, advertising, legal fees and supplementary liability insurance. Fees paid to consultants for whom you are contractually responsible or other holders shall not be shown as reimbursable expenses and shall be declared in lines 5.1, and/or 5.2 and 7.2 of the application. Payments made on behalf of the client and reimbursed by the client, which do not relate to the provision of architectural or consulting services, shall be included in the reimbursable expenses declared but only where they are also declared in the Total Gross Fees shown in line 5.1.

**Question #6**

This question is ONLY to be completed by holders who have coverage for *in-house* professional engineering services in their capacity as a holder of a Certificate of Authorization issued under the Professional Engineers Act, or the Professional Engineers Act R.S.O. 1980, Chapter 294 or any predecessor thereof and only in connection with the design or general review of the construction, enlargement or alterations of a building. Coverage only applies to errors, omissions and negligent acts committed AFTER the date of issuance of the Certificate of Practice under the Architects Act, or Memorandum of Practice under the Architects Act, R.S.O., 1980, Chapter 26 and the regulations thereunder or any predecessor thereof. *NO COVERAGE* is provided UNLESS specifically provided for in the Certificate of Insurance.

**Question #7**

The fees declared must be included in the Total Gross Fees declared in Question #5.1 AND should NOT include amounts already declared in line 5.3 "Reimbursable Expenses".

**Line 7.1**

- The following are included: feasibility studies, mortgage assessments, expert witness services, renderings, perspectives, lost competitions, locations and site analysis, operational programming, user needs and facilities analysis, attendance at public meetings, re-zoning applications, promotional services, town planning, master planning. Preparation of measured drawings and record drawings when NOT provided in conjunction with basic services rendered in whole or in part. Building area calculations, property assessments and evaluations, or arbitration.

**Line 7.2**

- This relates to services rendered to another holder of a certificate of practice that is also insured by Pro-Demnity Insurance Company. It is intended to prevent charging premiums to two holders insured by Pro-Demnity Insurance Company on the same fee income.

**Line 7.3**

- The fees shown must relate to additional services for interior design.

**Question #8**

This question applies to holders whose clients may provide the office space, equipment, drafts person and other support to the holder in respect of the professional services rendered on the project.

**Question #9**

This question relates to any type of consultant retained by you for the purpose of performing your professional services. It is prudent risk management to monitor that your consultants have and maintain their professional liability insurance.

**Question #10**

This question applies to holders that obtain 25% or more of their income from one client. The purpose is to determine whether there is an arms-length relationship between your practice and your client.

**Question #11**

This is a very important question and if the named insured(s) include more than one holder, predecessor(s) or any partner, officer, director, shareholder or employee for their interest in a former holder, then enquiry should be made with all parties before answering the questions.

Note that for any question answered "Yes", full details must be provided in Question #13.

**Question #12**

The answer to this question includes any knowledge or information relating to the current practice, its predecessor in practice and any participation of a partner, officer, director, shareholder or employee in a previous practice, its practice management, personal management or affiliated company(ies).

If the question is answered "Yes", provide the following information under Question #13 or on a separate sheet:

Date of Claim:  
Name of Project:  
Location:  
Description of Circumstances:  
Amount Claimed:  
Amount Paid:  
Current Status (finalized or outstanding)

***It is very important that all matters answered "Yes" in Question #12 have been reported to your existing insurers. Should any matters arise between the time of completing the application for insurance provided by Pro-Demnity Insurance Company, these must be reported to the existing insurer prior to the expiry date of such insurance.***

**Question #13**

ONLY to be completed where answers to Questions #11 and/or #12 are shown as "Yes".

**Question #14**

ONLY to be completed where answered "No" in this question.

**Question #15**

Applicable ONLY to holders with Total Gross Fees in excess of \$250,001 as shown in line 5.1. The following schedule indicates the maximum deductible possible based on the Total Gross Fees declared in line 5.1 of the application:

<u>Gross Fees</u>	<u>Maximum Deductible</u>	<u>Gross Fees</u>	<u>Maximum Deductible</u>
\$ 0 - \$ 50,000	\$ 1,000	\$ 500,001 - \$1,250,000	\$ 25,000
\$ 50,001 - \$100,000	\$ 2,000	\$1,250,001 - \$2,500,000	\$ 50,000
\$100,001 - \$250,000	\$ 5,000	\$2,500,001 - \$3,750,000	\$ 75,000
\$250,001 - \$500,000	\$10,000	\$3,750,001 and over	\$100,000

**The maximum deductible provided by Pro-Demnity Insurance Company is \$100,000.**

The deductible selected may be below the maximum deductible permitted. For example, a deductible of \$5,000 can be selected even where the Total Gross Fees for the last fiscal year indicates a maximum deductible of \$25,000. **It is recommended that the deductible selected be the minimum available.**

Should you require a deductible above the maximum allowed (but not exceeding \$100,000), an irrevocable letter of credit must be filed for an amount representing the difference between the amount selected and the maximum deductible allowed. For example, maximum deductible \$10,000, deductible selected \$25,000. Therefore amount of letter of credit will be \$15,000.

For deductibles of \$5,000 and above, the discount of premiums is as follows:

<u>Deductible</u>	<u>Discount of Premium</u>
\$ 5,000 (standard)	Nil
\$ 10,000	5%
\$ 25,000	20%
\$ 50,000	30%
\$ 75,000	40%
\$100,000	50%

**No discount of premium applies in respect of the minimum premium.**

**In addition, discount only applies to the premium relating to Pro-Demnity's retention of \$250,000.**

**Question #16 ONLY COMPLETE IF INCREASED CLAIM LIMIT (ABOVE \$250,000) AND ENHANCED COVERAGE IS REQUIRED.**

**The additional coverage is OPTIONAL and may be purchased through the insurance industry with an insurance company of your choice or through Pro-Demnity Insurance Company.**

The Pro-Demnity Insurance Company increased limits insurance program is subject to underwriting criteria similar to that of insurance companies issuing professional liability insurance policies in the marketplace.

It is IMPORTANT to evaluate not only whether increased limits of liability are required BUT ALSO whether any extensions of coverage is necessary for your practice.

In addition to categories listed in line 16.4 of the application and Guidelines, coverage for the following may also be provided (subject to reinsurers' approval):

- professional engineering services performed by your practice not in connection with a building
- civil and other types of professional engineering services other than structural, mechanical and electrical professional engineering services
- flexible extensions of coverage (e.g. Design-Build)
- design team single project coverages.

Should you have any questions, please contact Pro-Demnity Insurance Company.

**Line 16.1**

- Complete as indicated. If you require a quotation for different limits, indicate more than one claim limit. Please note that the limits listed include the mandatory claim limit of \$250,000.

**Line 16.2.1**

**Full pollution coverage:** The minimum Limits of Liability shown in the Endorsement No. 1 to Policy No. 4 may be increased subject to **NO COVERAGE** for claims which relate to asbestos or asbestos products, and for any claims for projects situate in the USA or any proceeding instituted or claim made therein.

A pollution questionnaire must be completed for coverage to be considered.

**Line 16.2.2**

This relates to coverages which you may require which are not included in the Policy or Endorsement No. 1 thereto.

**Line 16.3**

This question applies to holders who have project(s) or office(s) situate outside of Ontario. PLEASE INDICATE WHERE "NIL" %.

**Line 16.4**

The term "other persons or entities" addresses subsidiary companies such as interior design, planning, etc. companies and any other persons you may wish to include under your professional liability insurance, if appropriate.

Services "not usual or customary" for a holder of a certificate of practice, may be considered for coverage. For example, exhibit design, film and stage sets, property management, etc.

Review your existing insurance arranged (if any), to ensure that no aspect of the coverage important to you has been omitted from the application.

For these coverages, additional information will be requested to provide the necessary material for underwriting purposes.

**Line 16.5**

For the purpose of this question, please indicate that portion of the construction values that apply to the fee income for professional services applicable to the last fiscal year and anticipated for the next fiscal year.

**Line 16.6**

The types of occupancies shown are fully described in the Building Code.

**Line 16.7**

List your five largest projects over the last five years as shown for underwriting purposes. This refers to completed or current projects.

**Question #17**

It is important that a record is maintained of holders who carry excess insurance for claims and statistical purposes.



## CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS

*Canada's Anti-Spam Legislation (CASL)* requires that we obtain your consent to send electronic messages to you.

As our valued Policyholder, we are seeking your consent to receive email and other electronic communications from [Pro-Demnity Insurance Company](#), a wholly owned subsidiary of the Ontario Association of Architects.

Pro-Demnity would like to continue to send you electronic communications with respect to matters regarding our insurance programs, including but not limited to coverages, new products and services, claims, bulletins, urgent communications and educational events. We do not sell or trade email addresses with any third parties.

If you consent to receiving electronic communications at your current email on file, as well as any future email addresses you may provide, please indicate below and sign and date this form, and return it to us.

☐ [Yes, I consent to receiving electronic communications from Pro-Demnity](#)

☐ [No, I do not consent to receiving electronic communications from Pro-Demnity](#)

You may withdraw your consent at any time by emailing: [mail@prodemnity.com](mailto:mail@prodemnity.com) indicating "No, I do not consent" in the subject line.

Should you not consent, Pro-Demnity will not be able to share valuable or timely updates with you by electronic communications. At our discretion, we may however, endeavour to use mail or fax instead, if these means are available to us.

Name of Holder of Certificate of Practice: \_\_\_\_\_

Authorized signature: \_\_\_\_\_  
(print Name of Applicant)

\_\_\_\_\_  
(signature of Applicant)

Date: \_\_\_\_\_

# Professional Liability Insurance Policy No.1

July 1, 2019

THE POLICY and Certificate of Insurance is the contract between the NAMED INSURED, the sole proprietor, partners and shareholders, who are members of THE ASSOCIATION, and THE INSURER, and is issued in consideration of the premium YOU have agreed to pay. This POLICY and the Certificate of Insurance are issued in reliance upon the representations which YOU have made and on the application for insurance which is now part of this contract.

**Except in PART I: DEFINITIONS, headings are inserted into the Policy for convenience of reference only and do not form part of the Policy**

## **PART I: DEFINITIONS**

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Throughout this POLICY certain words have been capitalized to indicate that they have a specific meaning as shown below:

### **YOU, YOUR**

The NAMED INSURED shown on the Certificate of Insurance issued under this POLICY and all other persons defined as 'INSUREDS' below.

### **THE INSURER**

Pro-Demnity Insurance Company.

### **THE ASSOCIATION**

The Ontario Association of Architects.

### **NAMED INSURED**

The person(s) specifically designated on the Certificate of Insurance.

### **INSUREDS**

1. The NAMED INSURED;
2. Any present or former partner, officer, director, shareholder or employee of the NAMED INSURED while acting within the scope of his/her duties for the NAMED INSURED;
3. The heirs, executors, administrators and legal representatives of each INSURED as defined in 1 and 2 above, in the event of death or, if adjudged bankrupt, insolvent or incompetent, but only with respect to errors, omissions or negligent acts committed prior to the INSURED's death, bankruptcy, insolvency or incompetency;
4. Any individual or personal corporation retained by the NAMED INSURED under personal services contracts or personal services agreements (other than contracts or agreements for consulting services) or employee on loan from others, but only while acting within the scope of his/her duties for the NAMED INSURED;
5. Any former holder of a certificate of practice under the *Architects Act* or a memorandum of practice under the *Architects Act*, R.S.O. 1980, Chapter A.26 and the Regulations thereunder, or any predecessor thereof, for whose errors, omissions and negligent acts the NAMED INSURED is liable in law.

## PERIOD OF INSURANCE

The period of time commencing with the inception time and date shown in the Certificate of Insurance issued under this POLICY to a NAMED INSURED and continuing to the expiration time and date shown in the said Certificate of Insurance or to an earlier POLICY termination date, if any.

## CLAIM

1. A written or an oral demand for money or services; or
2. A written or an oral allegation of breach in the rendering or failure to render professional services; or
3. A written or an oral allegation of an error, omission or negligent act in the performance of professional services; or
4. A circumstance, dispute or controversy which a reasonable person might expect or should foresee could subsequently give rise to a CLAIM.

ALL CLAIMS arising from a single error, omission or negligent act shall be considered a single CLAIM regardless of the number of INSUREDS, the number of persons or organizations making a CLAIM or the number of civil suits or arbitration proceedings in which the CLAIMS are made.

All allegations of breaches in the rendering or failure to render professional services or errors, omissions or negligent acts contained in a Statement of CLAIM, Notice of Action, Counterclaim, Crossclaim, Third or Subsequent Party CLAIM, Application or submission to arbitration shall be considered a single CLAIM regardless of the number of parties to a civil or arbitration proceeding.

## THE INSURER'S RIGHT TO APPOINT COUNSEL AND CONTROL THE DEFENCE OF CLAIMS

THE INSURER shall have the right to appoint counsel to defend YOU and control the defence of any civil suit or arbitration proceedings against YOU arising out of a CLAIM for which insurance is provided by this POLICY.

## CLAIM EXPENSES

All the expenses THE INSURER incurs to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this POLICY. This includes costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers but only when expressly authorized or appointed by THE INSURER and also court and arbitration costs, including all costs assessed against YOU and costs for the attendance of witnesses other than YOU.

## DAMAGES

Compensatory DAMAGES, including pre-judgment interest, payable to claimants but does not include fees which have either not been paid to YOU or which YOU are asked to return, or punitive or exemplary DAMAGES, fines or penalties.

## DEDUCTIBLE

YOUR DEDUCTIBLE will be shown on the Certificate of Insurance or Endorsement thereto and is the first portion of the DAMAGES payable by YOU for each CLAIM.

YOUR DEDUCTIBLE will be calculated in accordance with the following formula:

$$\frac{\text{DAMAGES} \times \text{DEDUCTIBLE}^*}{\text{CLAIM LIMIT}} = \text{Amount Payable}$$

\*as shown on Certificate of Insurance or Endorsement

In no event, however, shall the DEDUCTIBLE YOU pay exceed the amount shown on the Certificate of Insurance or Endorsement thereto.

Where the portion of the DEDUCTIBLE payable by YOU falls below two hundred dollars (\$200.00), THE INSURER agrees to waive payment.

## PAYMENT OF DEDUCTIBLE

### PRESENT HOLDERS OF CERTIFICATES OF PRACTICE:

The NAMED INSURED who is a holder of a certificate of practice and every present or former sole proprietor, partner or shareholder of such a NAMED INSURED who is or was a member of THE ASSOCIATION must personally pay the DEDUCTIBLE in accordance with and in the manner provided by the By-laws of THE ASSOCIATION.

### FORMER HOLDERS OF CERTIFICATES OF PRACTICE:

Every present or former sole proprietor, partner or shareholder of a former holder of a certificate of practice who is a NAMED INSURED and is or was a member of THE ASSOCIATION must personally pay the DEDUCTIBLE in accordance with and in the manner provided by the By-laws of THE ASSOCIATION.

#### 1. Sole Proprietorship

The present or former sole proprietor must pay the full amount of the DEDUCTIBLE.

#### 2. Partnerships

Every present or former partner of the NAMED INSURED must pay an amount that is equivalent to the proportion of his or her or the corporate partners' interest in the partnership.

#### 3. Corporations

Every present or former shareholder of the NAMED INSURED must pay the proportion of the DEDUCTIBLE represented by the ratio between his or her share ownership and the total number of shares of the corporation owned by members of THE ASSOCIATION.

## PART II: YOUR INSURANCE

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### 1. THE INSURER'S OBLIGATIONS

THE INSURER is formally undertaking to fulfill three (3) obligations for YOUR benefit. YOUR DEDUCTIBLE applies to the first obligation only. The second and third obligations are covered with no DEDUCTIBLE.

#### a. **DAMAGES**

THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM providing YOUR liability is the result of an error, omission or negligent act in the performance of professional services for others in the NAMED INSURED's capacity as a holder of a certificate of practice. THE INSURER will also pay on behalf of the NAMED INSURED if specifically provided for in the Certificate of Insurance, all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM providing YOUR liability is the result of an error, omission or negligent act in the performance of professional services for others in YOUR capacity as a holder of a certificate of practice under the *Architects Act*, or a holder of a memorandum of practice under the *Architects Act*, R.S.O. 1980, chapter 26 and the regulations thereunder or any predecessor thereof.

THE INSURER will in addition pay on YOUR behalf if specifically provided for in the Certificate of Insurance, all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM if YOUR liability is the result of an error, omission or negligent act in the performance of structural, electrical or mechanical professional engineering services for others in connection with the design or general review of the construction, enlargement or alteration of a building in YOUR capacity as a holder of a certificate of authorization issued under the *Professional Engineers Act* 1984 or the *Professional Engineers Act*, R.S.O. 1980, chapter 294 or any predecessor thereof, provided that:

- i. the professional engineering services are or were provided only under the personal supervision and direction of a member of the Association of Professional Engineers of Ontario, and

- ii. the error, omission or negligent act occurred or is alleged to have occurred after the date the NAMED INSURED became a holder of a certificate of practice under the *Architects Act* or a holder of a memorandum of practice under the *Architects Act*, R.S.O. 1980, chapter 26 and the regulations thereunder or any predecessor thereof.

## LIMITS OF LIABILITY

Subject to YOUR obligation to pay the DEDUCTIBLE shown on the Certificate of Insurance, the maximum amount THE INSURER will pay as DAMAGES for each CLAIM during the PERIOD OF INSURANCE is the amount set out in the Certificate of Insurance under CLAIM Limit of Liability; the maximum amount THE INSURER will pay as DAMAGES for all CLAIMS arising from the performance of professional services with respect to one project is the amount set out in the Certificate of Insurance under Project Limit of Liability, subject always to the CLAIM Limit of Liability for any one CLAIM; and the maximum amount THE INSURER will pay as DAMAGES for all CLAIMS during the PERIOD OF INSURANCE is the amount set out in the Certificate of Insurance under Aggregate Limit of Liability, subject always to the CLAIM Limit of Liability for any one CLAIM and the Project Limit of Liability for all CLAIMS with respect to one project. The CLAIM Limit of Liability, the Project Limit of Liability and the Aggregate Limit of Liability have application no matter how many INSUREDS are covered under one Certificate of Insurance or how many persons or organizations make a CLAIM. With respect to any INSURED or project for which insurance is provided by more than one Certificate of Insurance, the maximum amount THE INSURER will pay as DAMAGES under all Certificates of Insurance shall not exceed the Limits of Liability that apply to one Certificate of Insurance.

## b. DEFENCE

Subject to THE INSURER's obligations under this POLICY as set out under "YOUR POLICY TERRITORY", THE INSURER will defend YOU in any civil suit or arbitration proceedings arising out of a CLAIM for which insurance is provided by this POLICY, even if the allegations against YOU are groundless, false or fraudulent.

THE INSURER's obligation to defend YOU shall not apply in the event there is an allegation against YOU arising out of a matter that falls within PART III "EXCLUSIONS" of this POLICY.

## c. SUPPLEMENTARY PAYMENTS

- i. THE INSURER will pay, for each CLAIM, the following:

1. CLAIMS EXPENSES, provided that in the event YOU become liable to pay DAMAGES arising out of a CLAIM in an amount that exceeds the amount set out in the Certificate of Insurance under CLAIM Limit of Liability, THE INSURER's obligation to pay YOUR CLAIMS EXPENSES shall be limited to an amount that is calculated by multiplying the total CLAIMS EXPENSES by the amount set out in the Certificate of Insurance under CLAIM Limit of Liability and dividing the product by the DAMAGES YOU are required to pay, ***unless YOU have specifically arranged professional liability insurance that applies as excess to the insurance provided by this POLICY. In that event, the maximum amount THE INSURER will pay as CLAIMS EXPENSES incurred by THE INSURER to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this POLICY, is \$200,000, even if the limits under the professional liability insurance that you have specifically arranged to apply in excess to the insurance provided by this POLICY have been eroded or exhausted;***
2. Post-judgment interest upon that part of a judgment which falls within the remaining Limits of Liability at the time.

- ii. THE INSURER will pay, for each CLAIM, in excess of its CLAIM Limit of Liability, the following:

1. all premiums on appeal bonds or bonds to release attachments. THE INSURER has no obligation to furnish such bonds but only to pay the premiums thereon;
2. YOUR expenses incurred for emergency medical and surgical relief to others and which YOU deemed necessary following an accident which YOU honestly believed might have been the result of an error, omission or negligent act on YOUR part.

## 2. YOUR POLICY TERRITORY

THE INSURER's obligations under this POLICY apply to CLAIMS arising out of actual or alleged errors, omissions or negligent acts which occur anywhere in the world provided that in the case of a building project

situate outside of Canada, CLAIMS are made and proceedings are instituted in the Province of Ontario and that in the case of a building project situate in Canada, CLAIMS are made and proceedings are instituted in Canada.

Notwithstanding the generality of the foregoing, THE INSURER shall have no obligations under this POLICY with respect to CLAIMS arising out of actual or alleged errors, omissions or negligent acts where CLAIMS are made or proceedings are instituted which seek to enforce by action, application or other proceeding, a foreign judgment obtained from a court in a jurisdiction outside of Canada.

### 3. YOUR POLICY PERIOD

YOUR POLICY PERIOD covers CLAIMS made against YOU for the first time during the PERIOD OF INSURANCE no matter when the actual or alleged error, omission or negligent act took place. There are two conditions which must be met for such a CLAIM to be covered.

First, YOU must have reported the CLAIM to THE INSURER during the PERIOD OF INSURANCE.

Secondly, YOU must have had no knowledge, prior to the PERIOD OF INSURANCE, of such CLAIM or of the circumstances, or a dispute or controversy which a reasonable person might expect could subsequently give rise to such a CLAIM.

Also, for YOUR protection, if during the PERIOD OF INSURANCE YOU report to THE INSURER circumstances of an error, omission or negligent act which any reasonable person would expect to subsequently give rise to a CLAIM, then THE INSURER will consider these a CLAIM even if a formal demand is advanced against YOU only after the PERIOD OF INSURANCE.

Any such CLAIM shall be subject to the Limit of Liability and DEDUCTIBLE in effect at the time the circumstances were reported to THE INSURER.

## PART III: EXCLUSIONS

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1. THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:

#### Trademark, Patent, Copyright

- a. the infringement of any trademark or patent or copyright;

#### Insolvency, Bankruptcy

- b. YOUR insolvency or bankruptcy or YOUR undergoing receivership or liquidation;

#### Advising or Requiring Insurance, Suretyship or Bond

- c. YOUR advising or requiring, or failure to advise or require, any form of insurance, suretyship or bond other than:
- i. guidance to the client or any insurance and legal advisors of the client, about insurance, suretyship, bond, or warranty program requirements to be included in the client's bid or contract documents;
  - ii. receipt of and delivery to the client of any insurance, suretyship or bond required to be obtained and submitted by a contractor, construction management firm or builder in response to requirements of bid or contract documents, but not advice as to the content or wording of any form of insurance, suretyship, bond or warranty;

#### Drawings, Plans, Specifications, Schedules and Contractor's Submittals

- d. YOUR failure to complete drawings, plans, specifications, schedules or other documents with reasonable promptness, unless such failure is the result of an error or omission in the preparation of these documents; or YOUR failure to act upon contractor's submittals including but not limited to shop drawings, product data and samples with reasonable promptness, unless such failure is the result of another error, omission or negligent act by YOU in the performance of professional services;

#### Liability Assumed Under Contract

- e. the liability of others YOU have assumed under contract or agreement except that THE INSURER will cover YOU for YOUR liability for YOUR employees, agents, servants and consultants, provided that YOUR liability would have already existed at law in the absence thereof;

#### Warranties, Guarantees, Indemnities or Penalty Clauses

- f. express warranties, guarantees, indemnities or penalty clauses YOU have given for the benefit of others unless YOUR liability would have already existed at law in the absence thereof;

#### Performance of Services Not Usual or Customary

- g. the performance of services not usual or customary for holders of certificates of practice, or members of THE ASSOCIATION or holders of certificates of authorization under the *Professional Engineers Act*;

#### Estimates of Profit, Return on Capital, Economic Return

- h. estimates of profit, return on capital, economic return or other estimates giving rise to forecasts of economic return;

#### Dishonest, Fraudulent, Criminal or Malicious Acts or Intentional Torts

- i. any dishonest, fraudulent, criminal or malicious act or omission of an INSURED or CLAIMS for libel or slander of title, deceit, malicious prosecution, assault, false arrest, fraud or conspiracy or any CLAIM for DAMAGES which were caused or contributed by or at the direction of an INSURED either intentionally or deliberately;

#### Bodily Injury, Personal Injury, Sickness, Disease or Death to Any Employee

- j. bodily injury, personal injury, sickness, disease or death to any employee of the INSURED arising out of and in the course of his or her employment by the INSURED; or any obligation for which the INSURED or any carrier as his or her insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Employers Liability, Disability Benefits Law or under any similar law;

#### Product or Equipment Malfunction and Deficiency

- k. any CLAIM arising directly or indirectly out of the malfunction or any known or suspected deficiency of any product or equipment sold, manufactured, supplied or installed by the INSURED or by others authorized by the INSURED;

#### Nuclear Energy

- l. i. liability imposed or arising under the *Nuclear Liability Act*; nor
  - ii. bodily injury or property damage with respect to which an INSURED under this POLICY is also insured under a contract of nuclear energy liability insurance (whether the INSURED is unnamed in such contract and whether or not it is legally enforceable by the INSURED) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
  - iii. bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
    - 1. the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an INSURED;
    - 2. the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
    - 3. the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an INSURED.
  - iv. With respect to property, loss of use of such property shall be deemed to be damage to or destruction of property.



As used in this POLICY:

1. the term “nuclear energy hazards” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
2. the term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
3. the term “nuclear facility” means:
  - a. any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - b. any equipment or device designed or used for:
    - i. separating the isotopes of plutonium, thorium and uranium, or any one or more of them,
    - ii. processing or utilizing spent fuel, or
    - iii. handling, processing or packaging waste;
  - c. any equipment or device used for the processing, fabrication or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations;
4. the term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission;

#### Single Project Policy, Retirement from Practice Policy

- m. i. a building project which is the subject matter of a Single Project Policy (Policy No. 3) issued to YOU by THE INSURER; or
- ii. CLAIMS that are made against YOU on and after the date on which a Retirement From Practice Policy (Policy No. 2) has been issued to YOU by THE INSURER

no matter what the Limits of Liability, DEDUCTIBLES or terms and conditions of the Policies Nos. 2 and 3 and in no event shall this POLICY be taken to be as excess insurance of the CLAIM Limit of Liability or on exhaustion of the Aggregate Limit of Liability to Policies Nos. 2 and 3;

#### Offices Outside Province of Ontario

- n. the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, or otherwise, of structural, electrical or mechanical engineering services from an office outside the Province of Ontario maintained by YOU or in which YOU have or had a direct or indirect interest;

#### Services to Office Outside Province of Ontario

- o. the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, or otherwise, of structural, electrical or mechanical engineering services from an office in the Province of Ontario provided by YOU to an office outside the Province of Ontario maintained or used by YOU or in which YOU have or had a direct or indirect interest where the performance or non-performance of architectural and professional engineering services outside of the Province of Ontario is not insured against errors and omissions under a separate and distinct professional liability insurance policy that has a minimum Limit of Liability of \$250,000 in respect of each CLAIM;

#### Geotechnical Engineering and Surveying Services

- p. the performance of geotechnical engineering services or services that constitute the practice of cadastral and professional surveying under the *Surveyors Act*, by the NAMED INSURED;

#### War, Riots, Terrorism

- q. any CLAIM made against YOU, directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any of the following regardless of any cause or event contributing concurrently or in any sequence of the loss:
  - i. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
  - ii. riots, strikes or civil commotion; or
  - iii. any act of terrorism.

For the purpose of this exclusion, an act of terrorism means an activity that:

1. involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and
2. appears to be intended to:
  - a. intimidate or coerce a civilian population; or
  - b. disrupt any segment of the economy of a government de jure or de facto, state, or country; or
  - c. overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
  - d. affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

This POLICY also will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS made against YOU, directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, retaliating against or responding to i., ii. or iii. above.

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

In the event any portion of this exclusion is found to be unenforceable, the remainder shall remain in full force and effect.

#### Ingress of Precipitation

- r. any CLAIM made against YOU, directly or indirectly arising out of, contributed by, caused by ingress of precipitation, resulting from, or in connection with YOUR design or selection of an exterior above-grade wall, which has no provision for drainage of precipitation that penetrates the wall system, or as otherwise provided in the Practice Bulletins issued by THE ASSOCIATION.

This exclusion shall not apply to:

- i. Solid masonry, concrete, or massive moisture tolerant systems;
- ii. Window systems, pre-engineered metal building systems, or any system specifically approved by THE INSURER and provided in the Certificate of Insurance or otherwise; and
- iii. Design commenced by YOU prior to July 1, 2002.

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

Claims By Business Enterprise, Charity, Club, Trust, Estate, Association or Organization Having an Interest

2. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU:

- a. by a business enterprise, charity, club, trust, estate, association or any organization
  - i. in which YOU either directly or indirectly have or at the time of the performance of the professional services had an interest; or
  - ii. that directly or indirectly has or at the time of the performance of the professional services had an interest in YOU;
- b. by any employee, director, partner, officer or shareholder, member, trustee, executor, administrator or representative of any such business enterprise, charity, club, trust, estate, association or other organization.

This exclusion shall not apply where the interest held by the business enterprise in YOU or the interest held by YOU in the business enterprise, whether held as equity, ownership or voting rights, is less than or equal to ten percent (10%).

Claims by an Employee or a Related Company

3. Notwithstanding that YOU are a holder of a certificate of practice, THE INSURER will not cover YOU, pay DAMAGES, or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where the relationship between YOU and the person or organization who makes the CLAIM is that of employee and employer and not independent contractor and principal or where the CLAIM made against YOU is by a parent company, a subsidiary or affiliated company of YOUR employer.

In determining whether or not the relationship is that of employee and employer or independent contractor and principal, regard will be had for the following:

- a. the degree of control that YOU are subject to in performing the architectural services;
- b. the opportunity YOU have to make a profit or suffer a loss in performing the architectural services;
- c. whether YOU have a firm or practice that is separate from and not integrated into the organization to whom YOU are providing architectural services.

The relationship between YOU and the organization to whom YOU are providing architectural services will be considered to be that of employee and employer where one or more of the following prevails:

- d. YOU must comply with instructions as to when, where and how the architectural services are to be performed;
- e. YOU must render the services personally and cannot engage others to perform all or part of the service without consent;
- f. the hours and days during which the architectural services are provided are set by the employer;
- g. YOU must devote either YOUR full time or substantial time to the business of the employer;
- h. YOU are paid in regular amounts at stated intervals;
- i. the employer deducts EI, CPP, insurance, income tax and other similar matters from YOUR pay;
- j. where the employer owns or controls the work site;
- k. the employer requires the submission of regular oral or written reports;
- l. where YOU usually work only for one employer.

#### Misrepresentation of Fact in Insurance Application

4. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where there is a misrepresentation of fact whether by omission or otherwise in the application for insurance or any application for renewal of insurance that has been filed by YOU or where YOU are in breach of any of the terms or conditions of the POLICY.

#### Other Insurance

5. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where YOU are insured against errors, omissions or negligent acts arising out of the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, in the performance of structural, electrical or mechanical engineering services, under a professional liability insurance policy issued by any other insurer as defined by the *Insurance Act*, or similar legislation prescribed by another jurisdiction or country, no matter what the Limits of Liability, DEDUCTIBLES or terms and conditions of the insurance policy are and whether or not the policy was issued for a single project or otherwise except insurance specifically arranged to apply as excess to the insurance provided by this POLICY.

In no event shall this POLICY be taken to be as excess insurance to any other professional liability insurance policy that may have been issued to YOU.

#### Punitive, Exemplary DAMAGES, Fines, Penalties

6. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU for punitive or exemplary DAMAGES, fines or penalties, except that if an action or proceeding is brought against YOU for any CLAIM falling within the insurance provided by this POLICY seeking compensatory, punitive or exemplary DAMAGES, then THE INSURER will afford a defence to such an action or proceeding in accordance with obligation 2 of this POLICY but without any liability whatsoever for such punitive or exemplary DAMAGES, fines or penalties.

#### Waiver of INSURER's Right of Recovery

7. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where YOU have entered into any agreement or given a waiver or provided an undertaking not to enforce any rights, that may prohibit, restrict, postpone or imperil THE INSURER's right of recovery against any other person.

## **PART IV: GENERAL CONDITIONS**

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### **1. THE INSURER'S RIGHTS OF SURVEYS AND REVIEWS**

THE INSURER has the right to:

- a. make or authorize surveys or perform reviews of the NAMED INSURED's activities;
- b. provide to the NAMED INSURED reports or the findings of any surveys or reviews;
- c. recommend any changes to the NAMED INSURED's activities; and
- d. require that the NAMED INSURED or any partner, officer, director, shareholder or employee of the NAMED INSURED meet with THE INSURER or any of its representatives with respect to the NAMED INSURED's CLAIMS history for the purpose of reducing the exposure to CLAIMS or any other matter related to risk management, CLAIMS prevention, POLICY restrictions, DEDUCTIBLE and the calculation of premiums to be paid by the NAMED INSURED.

## 2. YOUR DUTIES IN THE EVENT OF A CLAIM

### a. WHAT YOU MUST DO:

- i. **NOTICE:** As soon as YOU become aware of a CLAIM, YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding the CLAIM. As events unfold which may have an effect on the CLAIM, YOU must continue to keep THE INSURER informed.
- ii. **COOPERATION:** YOU must cooperate with THE INSURER, and, upon request, provide written statements, submit to examinations and questioning, assist in effecting settlement, secure and give evidence and assist in any reasonable way THE INSURER deems necessary. YOU must give this cooperation at YOUR own cost. ***YOU must promptly pay all CLAIMS EXPENSES over and above the CLAIMS EXPENSES payable by THE INSURER under this POLICY.***
- iii. **DEDUCTIBLE:** YOU must pay YOUR DEDUCTIBLE promptly upon request.

### b. WHAT YOU MUST NOT DO:

- i. **ADMISSIONS:** YOU must not admit responsibility, assume any obligation or make any commitment of money or services without THE INSURER's consent, even if YOU believe there may have been an error, omission or negligent act on YOUR part.
- ii. **RECOVERIES:** YOU must not do anything which will imperil THE INSURER's rights of recovery against any other party.

## 3. YOUR CONSENT TO SETTLE

THE INSURER may settle any CLAIM without YOUR consent and if it does so YOU will nevertheless remain liable to contribute YOUR DEDUCTIBLE as provided by the terms of this POLICY.

If YOU object to the settlement of a CLAIM recommended by THE INSURER, the latter may permit YOU to contest or continue any civil suit or arbitration proceeding arising out of the CLAIM but only on the condition that the amount payable under this POLICY for such CLAIM shall not exceed the amount for which the CLAIM could have been settled inclusive of costs, CLAIMS EXPENSES and other expenses incurred up to the date of such objection, subject always to YOUR DEDUCTIBLE and the limits and limitations of this POLICY.

## 4. THE INSURER'S RIGHTS TO RECOVER FROM OTHERS

After THE INSURER has paid DAMAGES under this POLICY, YOUR rights to recover against any other party are automatically transferred to THE INSURER to the extent of the payment it made. YOU shall do everything needed to assist THE INSURER and YOU must not prejudice its rights of recovery.

## 5. ASSIGNMENT OF INSURANCE

YOU cannot assign YOUR rights under this POLICY to anyone else without THE INSURER's consent. If YOU should be adjudged bankrupt, insolvent, incompetent or die during the PERIOD OF INSURANCE, this POLICY will cover YOUR legal representatives in the same manner as it presently covers YOU.

YOU agree that any notice of any kind THE INSURER mails to the NAMED INSURED at the address shown on the Register of THE ASSOCIATION shall constitute notice to YOUR legal representatives.

## 6. THE INSURER'S RIGHT OF AUDIT

During the PERIOD OF INSURANCE, during any extension thereof or for one year thereafter, THE INSURER has the right to inspect YOUR premises and operations and to examine and audit YOUR books, records, accounts, documents and files for each architectural project, for the purposes of any inquiry or investigation related to the calculation of the premiums for YOUR insurance or with respect to any question as to the application or breach of the terms and conditions of the POLICY. THE INSURER assumes no responsibility whatsoever by exercising or declining to exercise such right.

## **7. DISPUTE BETWEEN INSURED**

In the event of a dispute between INSURED as to the apportionment of liability in any occurrence, such dispute shall be decided by an arbitrator.

## **8. PREMIUM**

YOUR Premium will be shown on the Certificate of Insurance as either a Fixed Premium or a Deposit Premium adjustable upon cancellation or expiry of the PERIOD OF INSURANCE.

If YOUR Premium is a Deposit Premium which is adjustable, then upon cancellation or expiry of the PERIOD OF INSURANCE, YOU must declare to THE INSURER the amount of Gross Fees for professional services billed by YOU as shown in the annual financial statement for YOUR last fiscal year. THE INSURER will then calculate YOUR final premium by multiplying the rate per one hundred dollars (\$100.00) of fees shown on the Certificate of Insurance by the total amount of fees YOU have declared.

If this premium adjustment produces a difference between the final premium and the deposit premium of less than two hundred dollars (\$200.00), YOU and THE INSURER both agree to waive the adjustment and forgive either the additional premium payable by YOU or the return premium payable to YOU as the case may be. Any premium adjustment is subject to THE INSURER retaining at least the minimum retained premium shown on the Certificate of Insurance.

## **9. PLAN CREDIT**

The Board of Directors of THE INSURER shall, in respect of each financial year of THE INSURER, determine and credit to YOU the amount of refund of premiums to which YOU shall be entitled in respect of such financial year (the "Plan Credit"). The Plan Credit so credited to YOU in respect of such financial year shall be applied, in a manner determined by THE INSURER, in the next financial year of THE INSURER in discharge, in whole or in part, of YOUR liability to pay premiums to THE INSURER.

## **10. WAIVER OF EXCLUSIONS AND BREACH OF CONDITIONS**

Whenever insurance under any provision of this POLICY would be excluded, suspended or lost because of Exclusion 1.i. relating to any judgment or final adjudication based upon or arising out of any dishonest, fraudulent, criminal, malicious or deliberately wrongful acts, errors or omissions of any INSURED, THE INSURER agrees that such insurance as would otherwise be afforded under this POLICY shall apply with respect to each and every INSURED who did not personally commit or omit or personally participate in committing or omitting one or more of the acts, errors or omissions described in any such exclusion, provided that if the condition be one with which such INSURED can comply, after receiving knowledge thereof, the INSURED entitled to the benefit of the Waiver of Exclusions and Breach of Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other INSURED to comply therewith.

## **11. POLICY CONFORMITY WITH STATUTES**

Terms of this POLICY which are in conflict with the statutes of the Province wherein this POLICY is issued, are hereby amended to conform to such statutes.

## **12. POLICY INTERPRETATION**

The POLICY shall be interpreted in accordance with the law of Ontario and all questions arising under the POLICY including whether or not a CLAIM made against YOU is insured by the POLICY and whether THE INSURER has a duty to defend YOU in any civil suit or arbitration proceedings arising out of a CLAIM or pay on YOUR behalf any sum which YOU should become liable to pay as DAMAGES arising out of a CLAIM shall be within the exclusive jurisdiction of the Superior Court of Justice in Ontario and shall be determined by that Court.

## **13. THE INSURER'S RIGHT TO BROADEN COVERAGE**

THE INSURER shall have the right at any time during the PERIOD OF INSURANCE to amend this POLICY to broaden any coverage under this POLICY or Endorsement No. 1 to this POLICY.

#### **14. CURRENCY**

All sums mentioned in this POLICY are in Canadian currency.

#### **15. CANCELLATION BY THE INSURER**

THE INSURER may cancel YOUR insurance under this POLICY, for the non-payment of any premium, levy, DEDUCTIBLE or taxes, by giving notice of intention to cancel this POLICY as provided in Section 79 of and Schedule B to the By-laws of THE ASSOCIATION.

The effective date of cancellation shall be the 11th day following the date of mailing of the notice of intention to cancel.

#### **16. NOTICE TO EACH OTHER**

The NAMED INSURED shall be considered the agent of all other INSUREDS under this POLICY.

All notices THE INSURER sends to YOU under this POLICY must be sent to the NAMED INSURED at the address shown on the Register of THE ASSOCIATION.

All notices YOU send to THE INSURER under this POLICY must be sent to:

**Pro-Demnity Insurance Company, 160 Bloor Street East, Suite 1001, Toronto, ON M4W 1B9**



## ENDORSEMENT NO. 1 TO POLICY NO. 1

### EXTENSIONS OF COVERAGE AND MODIFICATIONS TO EXCLUSIONS

#### 1. **BREACH OF PROFESSIONAL CONFIDENTIALITY**

THE INSURER will pay on YOUR behalf all sums which YOU become legally liable to pay as DAMAGES arising out of a CLAIM resulting from any inadvertent breach of professional confidentiality provided YOUR liability arose from YOUR performance of professional services for others in the NAMED INSURED's capacity as a holder of a Certificate of Practice and YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken to be as excess insurance to any other liability insurance policy that may be issued to YOU.

#### 2. **DISHONESTY OF EMPLOYEES**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM resulting from financial loss to third parties caused by dishonest, fraudulent or criminal acts of YOUR present or former employees while acting within the scope of their duties for the NAMED INSURED but the amount payable shall be limited to YOUR liability less the amount recoverable from the dishonest or fraudulent person.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for:

- a. any CLAIM caused by or contributed to by any present or former partner, officer, director, or shareholder of the NAMED INSURED;
- b. any CLAIM made by any present or former officer, director, shareholder, consultant, agent, or employee of the NAMED INSURED;
- c. any CLAIM arising from the provision of services which are not performed in the NAMED INSURED's capacity as a holder of a Certificate of Practice; and
- d. any CLAIM where YOU are insured under a suretyship or bond or insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken to be as excess insurance to any insurance, suretyship or bond issued to YOU.

It is a condition precedent that on discovery of any reasonable cause for suspicion of fraud, dishonesty or criminal act on the part of a present or former employee, whether giving rise to a CLAIM under this extension of coverage or not, YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding YOUR suspicion; otherwise, THE INSURER shall not be liable for any CLAIM arising from any loss sustained resulting from an act committed on the part of the employee or employees concerned, on the date of such discovery.

#### 3. **LIBEL AND SLANDER**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become legally liable to pay as DAMAGES arising out of a CLAIM resulting from libel and/or slander committed without animosity by reason of words written, uttered or published by YOU provided YOUR liability arose from YOUR performance of professional services to others by YOU while acting within the scope of YOUR duties for the NAMED INSURED and provided YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU.



It is a condition precedent that in the event of a CLAIM, YOU shall, upon the reasonable request of THE INSURER, issue, publish and/or broadcast, orally and/or in written form, an apology and expression of regret, the form and content of which are to be approved by THE INSURER. If on receipt of such a request from THE INSURER, YOU refuse to issue such an apology and expression of regret, THE INSURER shall not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments in respect of any DAMAGES, defence costs or supplementary payments incurred after the date of such refusal.

#### 4. **INFRINGEMENT OF COPYRIGHT**

Notwithstanding PART III Exclusion 1.a. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM from any inadvertent infringement of copyright, patents, Registered Designs, Trademarks or Passing-off provided that YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU.

#### 5. **LOSS OF DOCUMENTS**

THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM for the accidental destruction, irrecoverable damage, or loss, or the theft of any documents (as defined herein) which YOU, in YOUR capacity as a holder of a Certificate of Practice, accept as a custodian in the course of YOUR professional services to others.

In addition, THE INSURER will pay the costs and expenses incurred by YOU in replacing or restoring such documents. However, any CLAIM for costs and expenses shall be supported by bills or accounts which shall be subject to prior approval by THE INSURER.

The DEDUCTIBLE shall not apply to the costs and expenses incurred in replacing or restoring such documents.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for any CLAIM where YOU are insured under a liability or property/casualty policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The expression "Documents" shall be deemed to mean maps, plans, drawings, records, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, tickets, bank notes, currency notes, negotiable instruments). Document which are stored on magnetic or electronic media shall be deemed to be physical documents on the condition that such documents were duplicated on magnetic or electronic media with the intention that in the event of destruction or irrecoverable damage the duplicate can be used as a basis for restoring the documents to their original status. It is a condition precedent that the onus of proof that the intention to use the duplicate as a basis for restoring the documents is the responsibility of the NAMED INSURED.

#### 6. **REIMBURSEMENT OF DEFENCE COSTS INCURRED AGAINST ALLEGATIONS OF INTENTIONAL ACTS**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will reimburse YOU for defence costs reasonably incurred arising from YOUR performance of professional services in YOUR capacity as a holder of a Certificate of Practice in respect of civil actions alleging Intentional Acts (as defined herein) otherwise not covered under terms of this POLICY, where YOU are found to be innocent by a court of competent jurisdiction or the action is discontinued provided that there is no payment of any monies, DAMAGES, fines or other penalties and there is no settlement or payment by YOU of any consideration in such civil actions.

The amount payable will be the defence costs paid by YOU reduced by the amount of costs awarded to YOU by a court of competent jurisdiction.

THE INSURER will not reimburse YOU for defence costs where:

- a. YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability,

deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU;

- b. the defence costs arise from a complaint or disciplinary hearing under the *Architects Act*, *Professional Engineers Act* and the regulations thereof.

The expression "Intentional Acts" shall be deemed to mean fraud, conspiracy to injure, malicious acts or omissions, inducing breach of contract, and interference with economic relations.

A CLAIM for the purpose of this extension of coverage means a Notice of Action, Statement of Claim, Counterclaim, Third or Subsequent Party Claim, containing allegations of Intentional Acts.

The maximum amount of defence costs reimbursable to YOU shall not exceed \$100,000 each CLAIM and \$200,000 for all CLAIMS reported during the PERIOD OF INSURANCE.

**7. REIMBURSEMENT OF DEFENCE COSTS INCURRED IN PROSECUTIONS FOR CRIMINAL NEGLIGENCE CAUSING BODILY HARM OR DEATH IN CONTRAVENTION OF SECTIONS 220 OR 221 OF THE CRIMINAL CODE**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will reimburse YOU for defence costs reasonably incurred arising from YOUR performance of professional services in YOUR capacity as a holder of a Certificate of Practice in respect of a prosecution alleging a contravention of Section 220 or 221 of the Criminal Code (criminal negligence causing death or bodily harm) otherwise not covered under terms of this POLICY, where YOU are found to be innocent by a court of competent jurisdiction or the prosecution is discontinued provided that there is no payment of any monies, DAMAGES, fines or other penalties and there is no settlement or payment by YOU of any consideration in such prosecution.

The amount payable will be the defence costs paid by YOU reduced by the amount of costs awarded to YOU by a court of competent jurisdiction.

THE INSURER will not reimburse YOU for defence costs where:

- a. YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU;
- b. the defence costs arise from a complaint or disciplinary hearing under the *Architects Act*, *Professional Engineers Act* and the regulations thereof.

The expression "criminal negligence" shall be deemed to mean the doing of anything, or the omitting to do anything that it is the duty of the person to do, that shows wanton or reckless disregard for the lives or safety of other persons.

A CLAIM for the purpose of this extension of coverage means an information, indictment, summons or warrant under the Criminal Code.

The maximum amount of defence costs reimbursable to YOU shall not exceed \$100,000 each CLAIM and \$200,000 for all CLAIMS reported during the PERIOD OF INSURANCE.

**8. DEFENCE COSTS COVERAGE AGAINST CONTRAVENTION OF STATUTES**

THE INSURER will pay on YOUR behalf defence costs arising in respect of prosecutions alleging a contravention of statutes, regulations and by-laws listed below:

- *Occupational Health and Safety Act*
- *Planning Act*
- *Building Code Act*
- *Environmental Protections Act*
- *Environmental Bills of Rights*
- *Ontario New Home Warranties Plan Act*
- *Ontario Heritage Act*
- *Health Protection and Promotion Act*

- *Condominium Act*
- *Fire Marshals Act*
- *Gasoline Handling Act*
- *Workers Compensation Act*

and any other statute or regulation of a province or territory of Canada or Government of Canada other than the Criminal Code, or by-law of a municipality in a province or territory of Canada other than the *Architects Act* and *Professional Engineers Act* which may reasonably apply to actions arising from the performance of architectural services by a holder of a Certificate of Practice when acting in his/her capacity as a holder of a Certificate of Practice.

A prosecution for the purpose of this extension means a certificate of offence, summons, information or any other document that initiates the prosecution alleging contravention of the above statutes, regulations or by-laws.

THE INSURER will not pay on YOUR behalf defence costs under this extension of coverage where YOU are insured under a liability policy issued under the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The maximum amount of the defence costs payable on YOUR behalf shall not exceed \$100,000 for each prosecution no matter how many counts or charges may be contained in the certificate of offence, summons, information or any other document that initiates the prosecution and \$200,000 for all prosecutions reported during the PERIOD OF INSURANCE. Defence costs will be paid only to lawyers appointed or expressly approved by THE INSURER.

#### 9. **TRAVEL AND ACCOMMODATION COSTS INCURRED AT REQUEST OF THE INSURER**

THE INSURER will reimburse YOUR travel and accommodation costs incurred by YOU as a result of attending meetings, mediation, arbitration or court but only when expressly authorized by THE INSURER.

The allowance for travel by automobile will not exceed the rates as established from time to time by the National Joint Council of the Public Service of Canada. Other travel costs must be authorized by THE INSURER.

Accommodation will be arranged by THE INSURER.

THE INSURER will not reimburse YOU where YOU are insured under a liability policy issued under the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The DEDUCTIBLE shall not apply to this extension.

#### 10. **PARALLEL DISCIPLINE PROCEEDING AND PROFESSIONAL LIABILITY CLAIM DEFENCE COSTS COVERAGE**

THE INSURER will pay on YOUR behalf defence costs reasonably incurred arising from a complaint by a member of the public, other than a member of THE ASSOCIATION, which is referred to the Discipline Committee, provided that a CLAIM must have been made against YOU that is related to the same issue and is insured by this POLICY.

The maximum amount of defence costs payable on YOUR behalf shall not exceed \$100,000 for each COMPLAINT and \$200,000 for all COMPLAINTS reported during the PERIOD OF INSURANCE. Defence costs will be paid only to lawyers appointed or expressly approved by THE INSURER.

THE INSURER will not pay defence costs on YOUR behalf where YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

#### **11. FAILURE TO REPORT CLAIM PRIOR TO EXPIRATION DATE OF INSURANCE**

THE INSURER will extend the PERIOD OF INSURANCE for sixty (60) days following the Expiration Date shown on the Certificate of Insurance, if YOU report a claim, of which YOU were aware prior to the Expiration Date, within sixty (60) days of the Expiration Date. It shall be a condition precedent to such extension of coverage under this Endorsement that:

- a. YOUR failure to report the CLAIM was due to inadvertence;
- b. YOU report the claim to the INSURER within sixty (60) days following the Expiration Date shown on the Certificate of Insurance; and
- c. in the event the INSURER alleges that YOUR failure to report the CLAIM prior to the Expiration Date is not due to inadvertence, the burden of proving the contrary shall be upon YOU.

If YOU do not report the CLAIM prior to the Expiration Date shown on the Certificate of Insurance, due to YOUR inadvertence, the Limits of Liability on the Certificate of Insurance that applied prior to the Expiration Date shall continue to apply during the extended period of coverage under this Endorsement.

#### **12. COVERAGE OMBUDSMAN CLAUSE**

Should the NAMED INSURED shown on the Certificate of Insurance issued under this POLICY and all other persons defined as "INSUREDS" in this POLICY disagree with any determination made concerning coverage under this POLICY by THE INSURER or its designates, YOU shall have the right to address in writing the subject matter of any disagreement to the COVERAGE OMBUDSMAN for a without-prejudice review, who shall be empowered to carry out such investigations and make enquiries of the NAMED INSURED and all other INSUREDS and others and review the issues concerning the disagreement and make on a without-prejudice basis recommendations, if any, for resolution of the disagreement to the NAMED INSURED and all other INSUREDS and/or THE INSURER.

Neither the NAMED INSURED nor any other INSURED nor THE INSURER shall be bound by any without-prejudice recommendation made by the COVERAGE OMBUDSMAN.

Any material, information or documentation submitted by the NAMED INSURED, the INSURED and/or THE INSURER to the COVERAGE OMBUDSMAN and the COVERAGE OMBUDSMAN him/herself, any report, working papers, notes, memos or other correspondence emanating from the COVERAGE OMBUDSMAN or found in his/her files shall remain confidential and, unless ordered by a court of competent jurisdiction, shall not be compellable for purposes of testimony or production by any person in any court of law, arbitration or disciplinary proceeding, and shall not be disclosed to any third party save in the proper course of any investigation performed by the COVERAGE OMBUDSMAN.

ALL OTHER DEFINITIONS, OBLIGATIONS, PROVISOS, EXCLUSIONS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

April 1, 2012 *(as amended to October, 2014)*

Endorsement No. 1 to Policy No. 1 takes effect and applies to all claims made on and after April 1, 2012.

## ENDORSEMENT NO. 2 TO PRO-DEMNITY POLICY NO. 1

### MODIFICATION TO EXCLUSIONS

Notwithstanding PART III Exclusion 1.r. of Policy No. 1, the following will apply to designs commenced by YOU on or after January 1, 2010.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:

Any CLAIM made against YOU, directly or indirectly arising out of or related to ingress of precipitation, resulting from, or in connection with YOUR design or selection of an exterior above-grade wall system.

This exclusion shall not apply to:

- i. Exterior above-grade walls or wall assemblies designed according to rainscreen principles that include both Primary and Secondary Planes of Protection (water barriers), provision for drying of the assembly, and an air space no less than 10mm deep behind the cladding with positive drainage to the exterior to protect the interior of the building from precipitation that penetrates the Primary Plane of Protection,
- ii. Windows designed according to rainscreen principles, inserted into a wall where they are fully supported at the perimeter, where all the components are specified and used in conformity with the structural and installation parameters of the relevant Canadian Standards Association (CSA) and Canadian Government Specifications Board (CGSB) documents, or other standards referenced in the applicable building code,
- iii. Solid masonry or concrete walls where drying of the masonry or concrete is not adversely affected by any other exterior building material,
- iv. Precast Concrete walls designed as drained systems utilizing two stage drained joints,
- v. Glass and metal Curtain Wall systems that incorporate both Primary and Secondary Planes of Protection (water barriers) with provision for positive drainage to the exterior in a rainscreen design,
- vi. Window Wall systems used on projects classified under Part 9 of the Ontario Building Code that incorporate both Primary and Secondary Planes of Protection (water barriers) and ventilated air spaces with provision for positive drainage to the exterior in a rainscreen design.
- vii. Window Wall systems used on projects other than those classified under Part 9 of the Ontario Building Code that comply with the conditions as provided by the Window Wall Endorsement dated July 28, 2009 to this insurance.
- viii. Pre-Engineered buildings or siding systems incorporating both Primary and Secondary Planes of Protection (water barriers) and provision for drainage to the exterior in a rainscreen design,

For the purposes of this exclusion:

- a. "Windows" or "Curtain Wall systems" shall not include "Window Wall systems";
- b. "Pre-Engineered buildings or siding systems" shall not include Exterior Insulated Finish Systems (EIFS), Insulated Concrete Form (ICF) systems or "Window Wall systems";
- c. "Solid masonry or concrete walls" shall not include Insulated Concrete Form (ICF) systems; and
- d. Regardless of the building code classification of the project, "Primary and Secondary Planes of Protection" shall have the meaning given to "First and Second Planes of Protection" respectively by the Ontario Building Code 2006, 9.27.2.3 (1)(a), (1)(b) and (1)(c).

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

July 28, 2009

Updated April 1, 2012 (Policy No. 1 dated April 1, 2012 refers to Exclusion 1.r. instead of the previous 1.s.

# Non-Drained Exterior Wall Exclusion

## **ENDORSEMENT NO. 3 TO PRO-DEMUNITY POLICY 1**

### *MODIFICATION TO EXCLUSIONS*

Notwithstanding PART III Exclusion 1 s) of Policies No. 1, 2 and 3 or PART III Exclusion 1 r) of Policy No. 4, the following will apply to designs commenced, [selected, approved or accepted](#) by YOU on or after [April 1, 2017](#).

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:

Any CLAIM made against YOU, directly or indirectly arising out of or related to ingress of precipitation, resulting from, or in connection with YOUR design, selection, [approval or acceptance](#) of an exterior above-grade wall system.

This exclusion shall not apply to:

- i) Exterior above-grade walls or wall assemblies designed [and constructed](#) according to rainscreen principles that include both Primary and Secondary Planes of Protection (water barriers), provision for drying of the assembly, and an air space no less than 10mm deep behind the cladding with positive drainage to the exterior to protect the interior of the building from precipitation that penetrates the Primary Plane of Protection,
- ii) Windows designed [and constructed](#) according to rainscreen principles, inserted into a wall where they are fully supported at the perimeter, where all the components are specified and used in conformity with the structural and installation parameters of the relevant Canadian Standards Association (CSA) and Canadian Government Specifications Board (CGSB) documents, or other standards referenced in the applicable building code,
- iii) Solid masonry or concrete walls where drying of the masonry or concrete is not adversely affected by any other exterior building material,
- iv) Precast Concrete walls designed [and constructed](#) as drained systems utilizing two stage drained joints,
- v) Glass and metal Curtain Wall systems that incorporate both Primary and Secondary Planes of Protection (water barriers) with provision for positive drainage to the exterior in a rainscreen design,
- vi) Window Wall systems used on projects classified under Part 9 of the Ontario Building Code that incorporate both Primary and Secondary Planes of Protection (water barriers) and ventilated air spaces with provision for positive drainage to the exterior in a rainscreen design,
- vii) Window Wall systems used on projects other than those classified under Part 9 of the Ontario Building Code that comply with the conditions as provided by the Window Wall Endorsement dated July 28, 2009 to this insurance,
- viii) Pre-Engineered buildings or siding systems incorporating both Primary and Secondary Planes of Protection (water barriers) and provision for drainage to the exterior in a rainscreen design.

*(continued overleaf)*

For the purposes of this exclusion:

- a) “Windows” or “Curtain Wall systems” shall not include “Window Wall systems”;
- b) “Pre-Engineered buildings or siding systems” shall not include Exterior Insulation and Finish Systems (EIFS), Insulated Concrete Form (ICF) systems or “Window Wall systems”;
- c) “Solid masonry or concrete walls” shall not include Insulated Concrete Form (ICF) systems; and
- d) Regardless of the building code classification of the project, “Primary and Secondary Planes of Protection” shall have the meaning given to “First and Second Planes of Protection” respectively by the Ontario Building Code 2006, 9.27.2.3 (1)(a), (1)(b) and (1)(c).

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

*July 28, 2009*

*Updated April 1, 2012:*

*Policies Nos. 1, 2 and 3 dated April 1, 2012 refer to Exclusion 1r) instead of the previous 1s)*

*Policy No. 4 dated April 1, 2012 refers to Exclusion 1q) instead of the previous 1r)*

*Updated April 1, 2017*

***NOTE:***

The Non-Drained Exterior Wall Exclusions in Pro-Demnity Insurance Policies No. 1, 2, 3 and 4 for a design commenced by YOU on and after July 1, 2002, and the Non-Drained Exterior Wall Exclusion in Endorsement No. 2 (*Updated April 1, 2012*) under Pro-Demnity Insurance Policies No. 1, 2, 3 and 4 for a design commenced by YOU on and after January 1, 2010, which were in effect immediately prior to this modification of Endorsement No. 2 under Pro-Demnity Policies No. 1, 2, 3 and 4, continue to remain in full force and effect.

February, 2015

## REPORTING A CLAIM

For the purposes of an Insurance Policy Claim, a Claim is one or more of:

- *A demand for money or services; or*
- *An allegation of breach or failure to render professional services; or*
- *An allegation of an error, omission or negligent act; or*
- *A circumstance, dispute or controversy which a reasonable person might expect or should foresee could subsequently give rise to a Claim.*

While there can be no certainty until you are served with a Notice of Action, Statement of Claim, Demand Letter or other originating process, there is no penalty for giving Pro-Demnity notice of any matter that may not constitute a Claim, and our advice is for you to tell us about the matter as early as possible, so that we may be able to give advice that prevents a Claim from developing.

Where problems develop during construction or a client voices dissatisfaction or refuses to pay fees and such like frequently encountered events, short of a claim, you have four recourses:

- Your own legal counsel
- The OAA Practice Department
- Pro-Demnity (Vice President, Practice Risk Management or the Claims Department)
- Your Broker where you have Single Project or Excess Insurance with an insurer other than Pro-Demnity

### Legal Counsel

An architectural practice needs access to legal advice from time to time, especially in the matter of contract negotiations and fee disputes, also for guidance on Liens and legal issues other than those covered by Professional Indemnity Insurance. Only a lawyer can give legal advice.

### The OAA Practice Department

The OAA has experienced Practice Advisors on staff. These should be your premier consultants for problems that arise that do not appear to be insurance claims. These advisors will suggest you approach Pro-Demnity if they believe the matter may be developing into a Claim or where they recognize insurance implications.

*Cont'd...*



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## Pro-Demnity Claims Department and / or Risk Manager

The Claims Department should be contacted as soon as a matter arises that may develop into a Claim. Once you have reported, the management of the matter will be directed to the Claims handler, in consultation with you. You must follow the advice you receive in order not to jeopardize coverage. The Claims handler will help you through the problem encountered, and obtain expert or legal counsel where appropriate.

Contact information for the Executive Claims Administrator is available from the Pro-Demnity website [www.prodemnity.com](http://www.prodemnity.com).

You will be required to complete a Notification of Claim Form. The form can be downloaded from the website.

Once a reporting is made, Pro-Demnity has a follow-up process. Every time a Claim is handled, a “Bring Forward” date is noted, and on that date, the file will be placed before the Claims handler, unless an event occurs that requires an earlier intervention.

The Vice President, Practice Risk Management, is available to advise on how you should respond to unusual contract requirements, and how you should handle complicated client issues, especially government agencies. The Vice President, Practice Risk Management, is also a resource for information on coverage issues arising out of sub-consultants or experts you are asked to include in your service.

When discussion indicates that a matter qualifies as a “Claim” as defined by your insurance, the Vice President, Practice Risk Management will direct you to the Claims Department.

## Your Insurance Broker

If you have a Single Project policy or Excess insurance from an insurer other than Pro-Demnity, your Broker should be informed and asked what services will be provided. There may be benefits available to you pursuant to the Policy. Read the Policy; there may also be gaps in coverage that you need to be aware of.

## Early Claims Reporting

Where you are uncertain whether or not a matter will develop into a Claim, report it to the Pro-Demnity Claims Department and the Claims staff, who are very experienced in recognizing circumstances likely to become a Claim, and will advise you on your best course of action. We cannot help if you don't ask.

**IMPORTANT: Nothing in this Bulletin overrides the terms and conditions of the Policy.**

# Pro-Demnity Insurance Company

September 16, 2009

## IMPORTANT NOTICE:

### **Non-Drained Exterior Wall Exclusion & Window Wall Endorsements**

Two important changes to the Pro-Demnity Insurance Policies provided under the mandatory insurance program will be added by endorsement to your insurance at the renewal date.

The significance of this communication is to provide notification of the impending endorsements and to draw attention to the application to designs commencing on or after January 1, 2010.

These endorsements were developed and reviewed with a group of architects and building envelope experts, have been approved by the Pro-Demnity Insurance Company Board and accepted by OAA Council.

#### 1. Non-Drained Exterior Wall Exclusion

Exclusion 1 s) of Policies No. 1, 2 and 3 and Exclusion 1 r) of Policy No. 4 limit coverage for ingress of precipitation on buildings where design has commenced on or after July 1, 2002. The essence of the exclusion has been to require exterior walls to include provision for drainage. A number of exceptions to the requirement for drainage was included.

At your next renewal, a new Endorsement will be added to the Pro-Demnity policies that modifies these requirements for designs commencing on or after January 1, 2010. The wording of the Endorsement is attached. It is much more extensive than the current wording, the intent being to reduce any ambiguity as to what is expected for an exterior wall to be covered by the Pro-Demnity policies.

There is no longer any reference to Practice Bulletins issued by the OAA respecting insurability. The "OAA Rain Penetration Control Practice Guide" is now for information only and has been relocated as a resource on the OAA website and the "EIFS Interpretation Bulletin" has been withdrawn.

The review of the Non-Drained Exterior Wall Exclusion was occasioned by the withdrawal of the Practice Bulletin and EIFS Interpretation, emerging construction technologies and the continuation of claims involving exterior wall assemblies where the "provision for drainage" had proven inadequate.

Although the provisions will come into effect for projects commencing design on or after January 1, 2010, architects should be mindful of the requirements to influence the design and acquisition of cladding on current projects.

*(continued overleaf)*

## 2. Window Wall Endorsement

Window Wall is a type of window assembly that is in common use on certain types of projects, in particular high rise condominiums. Pro-Demnity has seen water ingress and other performance related claims respecting the use of these "systems" that mimic Curtain Wall in appearance but not in design or performance.

These assemblies are not adequately addressed by industry standards or by the building code and systems being used in Ontario appear to not reflect the experience acquired elsewhere.

In consultation with a number of architects and building envelope specialists familiar with the use of Window Wall in Ontario and elsewhere in Canada, a "Window Wall Endorsement" to the Pro-Demnity policies has been developed that will provide a "standard" to be met if a Window Wall design and installation is to be eligible for coverage.

Failure to adhere to the requirements of the Endorsement will result in exclusion from coverage in the event of a claim for water ingress respecting failure of the Window Wall.

The Endorsement will apply to buildings where design commenced on or after January 1, 2010; however, architects should be mindful of the requirements and are advised to refer to the Endorsement and take advantage of the requirements to influence the design and acquisition decisions on any current projects contemplating use of Window Wall.

The wording of the Window Wall Endorsement is attached.

The Window Wall Endorsement will not apply to buildings designed under Part 9 of the Ontario Building Code.

## **Note: Impact on Insulated Concrete Forms (ICF)**

Insulated Concrete Form (ICF) is being used in an increasing array of building types and configurations. Notwithstanding product literature that suggests a broad range of claddings are possible with ICF, many building designs appear to rely upon use of a "face sealed" application of "synthetic stucco" or an "EIFS type" exterior coating applied directly to the ICF. These applications can prove problematic respecting water ingress and adherence to code requirements respecting non-combustible construction, and the absence of any industry standards or code references addressing the use of ICF in other than Part 9 applications has led to difficulties and been a factor in a number of claims.

The current wording of the Non-drained Exterior Wall Exclusion has been interpreted by some as providing coverage for water ingress for ICF exterior walls without provision for drainage (e.g. "face sealed"), the assumption being that the concrete fill in the ICF constitutes "solid concrete" falling within one of the current exceptions.

These systems do not qualify as moisture tolerant solid concrete or masonry as there is no provision for drying, and to avoid any ambiguity, the amendment to the "Non-drained Exterior Wall Exclusion" is intended to require a separate cladding including drainage for exterior walls utilizing ICF if the assembly to be covered for water ingress claims.

## Non-Drained Exterior Wall Exclusion

### **ENDORSEMENT NO. \_\_\_ TO POLICIES NO. 1, 2, 3 and 4**

#### *MODIFICATION TO EXCLUSIONS*

Notwithstanding PART III Exclusion 1 s) of Policies No. 1, 2 and 3 or PART III Exclusion 1 r) of Policy No. 4, the following will apply to designs commenced by YOU on or after January 1, 2010.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:

Any CLAIM made against YOU, directly or indirectly arising out of or related to ingress of precipitation, resulting from, or in connection with YOUR design or selection of an exterior above-grade wall system.

This exclusion shall not apply to:

- i) Exterior above-grade walls or wall assemblies designed according to rainscreen principles that include both Primary and Secondary Planes of Protection (water barriers), provision for drying of the assembly, and an air space no less than 10mm deep behind the cladding with positive drainage to the exterior to protect the interior of the building from precipitation that penetrates the Primary Plane of Protection,
- ii) Windows designed according to rainscreen principles, inserted into a wall where they are fully supported at the perimeter, where all the components are specified and used in conformity with the structural and installation parameters of the relevant Canadian Standards Association (CSA) and Canadian Government Specifications Board (CGSB) documents, or other standards referenced in the applicable building code,
- iii) Solid masonry or concrete walls where drying of the masonry or concrete is not adversely affected by any other exterior building material,
- iv) Precast Concrete walls designed as drained systems utilizing two stage drained joints,
- v) Glass and metal Curtain Wall systems that incorporate both Primary and Secondary Planes of Protection (water barriers) with provision for positive drainage to the exterior in a rainscreen design,
- vi) Window Wall systems used on projects classified under Part 9 of the Ontario Building Code that incorporate both Primary and Secondary Planes of Protection (water barriers) and ventilated air spaces with provision for positive drainage to the exterior in a rainscreen design.
- vii) Window Wall systems used on projects other than those classified under Part 9 of the Ontario Building Code that comply with the conditions as provided by the Window Wall Endorsement dated July 28, 2009 to this insurance.
- viii) Pre-Engineered buildings or siding systems incorporating both Primary and Secondary Planes of Protection (water barriers) and provision for drainage to the exterior in a rainscreen design,

*(continued overleaf)*

For the purposes of this exclusion:

- a) "Windows" or "Curtain Wall systems" shall not include "Window Wall systems";
- b) "Pre-Engineered buildings or siding systems" shall not include Exterior Insulated Finish Systems (EIFS), Insulated Concrete Form (ICF) systems or "Window Wall systems";
- c) "Solid masonry or concrete walls" shall not include Insulated Concrete Form (ICF) systems; and
- d) Regardless of the building code classification of the project, "Primary and Secondary Planes of Protection" shall have the meaning given to "First and Second Planes of Protection" respectively by the Ontario Building Code 2006, 9.27.2.3 (1)(a), (1)(b) and (1)(c).

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

*July 28, 2009*

## Window Wall Endorsement

In accordance with item vii) of the Modification to Exclusions endorsement dated July 28, 2009, which forms part of this insurance, THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising from a CLAIM respecting YOUR design of a Window Wall system where all of the following conditions are met:

1. The Window Wall system giving rise to a CLAIM includes primary and secondary planes of protection (water barriers) and ventilated air spaces with provision for positive drainage to the exterior in a rainscreen design.
2. The design, testing and installation of the Window Wall system including framing members, glazing units, anchorage, slab edge covers, opening units, doors and the transitions to the adjoining assemblies and materials
  - i) incorporate the recommendations of an Independent Consultant (architect or professional engineer), having expertise with the design and installation of Window Wall systems who has been specifically engaged for this purpose on the project;
  - ii) the Independent Consultant has approved YOUR design for the Window Wall system for the specific project, and
  - iii) the Window Wall system as installed on the project is in compliance with YOUR design.
3. The manufacturer of the Window Wall system provides shop drawings and calculations for the Window Wall system to be used on the specific project for review by YOU and the Independent Consultant; and the shop drawings and calculations have been sealed by a professional engineer retained by the manufacturer respecting structural integrity, air barrier continuity and water ingress management.
4. The manufacturer of the Window Wall system provides YOU and the Independent Consultant with test reports for air leakage and water penetration in compliance with the requirements of the applicable version of CSA A440, or other standard applicable at the time and place of construction, and both YOU and the Independent Consultant have each reviewed and accepted these reports as appropriate for the specific project.
5. A full scale mock-up of the specific Window Wall system for the project, including framing members, glazing units, anchorage, slab edge covers, opening units, doors and transitions to adjoining assemblies and materials, has been successfully tested respecting air and water infiltration and environmental separation performance in accordance with recognized industry standards as determined, reviewed and approved by the Independent Consultant.
6. The completed Window Wall system on the project has been successfully tested in situ respecting air and water infiltration to the satisfaction of the Independent Consultant.
7. The entire Window Wall system as designed, constructed and installed is warranted respecting air leakage and water ingress by the Window Wall manufacturer for a period of not less than 5 years following substantial performance of the project or registration in the case of a condominium, whichever comes later. The warranty provided is to cover all of the labour and materials required to repair or replace the Window Wall system should air leakage or water ingress occur during the warranty period.

*July 28, 2009*

## QUESTIONS AND ANSWERS REGARDING PRO-DEMUNITY INSURANCE COMPANY

The OAA Indemnity Plan was established by the Ontario Association of Architects ("OAA") in 1987 to ensure that Holders of Certificates of Practice would be indemnified against claims arising from errors, omissions or negligent acts in the performance of services to others. It ensured that:

- 1) the profession controls its own destiny;
- 2) the premiums charged relate to the claims experience of the profession only;
- 3) the fluctuations in the cost and provision of coverage experienced through the insurance industry are avoided.

On Proclamation of the amendments to the Architects Act on January 15, 2003, the OAA Indemnity Plan ceased and was replaced by Pro-Demnity Insurance Company ("the Insurer"), a wholly-owned subsidiary of the Ontario Association of Architects ("OAA"). The assets and liabilities of the Indemnity Plan including the obligations in respect of the provision of professional liability insurance to Ontario architectural practices, were transferred to the insurance company.

The administration of the insurance company and the provision of professional liability insurance remain unchanged as in the past.

The following notes are intended to anticipate the most likely questions which may be raised by members of the OAA on application for annual practice insurance.

1. **Q. What is the mandatory limit of liability?**

A. Damages:                      \$250,000 each claim for each project and  
                                         \$500,000 in the aggregate for all claims made for each  
                                         project during the Period of Insurance  
                                         \$1,000,000 in the aggregate for all claims made during the  
                                         Period of Insurance

Claims Expenses:              Are payable in addition to the Limit of Liability for each claim provided that where damages exceed the Limit of Liability, the Insurer's obligation is limited to proportion of the claims expenses as the Limit of Liability for each claim bears to the damages awarded.

For example:

Limit	\$250,000	x	Expenses	\$50,000	=	\$25,000
Damages	\$500,000					

The Insurer pays \$25,000. The excess insurer or the Insured pays the balance.

2. **Q. How is the deductible applied?**

- A. The deductible is the first portion of the damages payable by you for each claim. Your deductible will be calculated in accordance with the following formula:

$$\frac{\text{DAMAGES} \times \text{DEDUCTIBLE}^*}{\text{CLAIM LIMIT } \$250,000} = \text{Amount Payable}$$

\*as shown on Certificate of Insurance or Endorsement

In no event, however, shall the deductible you pay exceed the amount shown on the Certificate of Insurance or Endorsement thereto.

Where the portion of the deductible payable by you falls below two hundred dollars (\$200.00), the Insurer agrees to waive payment.

3. **Q. Is the deductible included within the limit of liability?**

- A. Yes, the maximum amount payable by the Insurer for damages is the limit of liability of \$250,000 less the deductible.

For example: Where the deductible is \$5,000, the maximum amount payable by the Insurer for damages is \$245,000.

4. **Q. What are claims expenses?**

- A. These are the expenses incurred by the Insurer to investigate, defend, settle, arbitrate or litigate a claim covered by the Insurer.

They include costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers, and also court and arbitration costs including all costs assessed against you, and costs for the attendance of witnesses other than you.

5. **Q. What are damages?**

- A. Compensatory damages, including pre-judgement interest, payable to claimants, but does not include fines, penalties (whether contractual or not), punitive or exemplary damages or fees which have either not been paid to you or which are asked to return.



6. **Q. How are premiums for mandatory limits determined?**

- A. The premiums are determined in accordance with the premium rating formula applicable to all holders of Certificates of Practice.

7. **Q. Can we appeal the premium charged?**

- A. The premium rating formula is applicable to all Insureds to ensure that each Insured is treated in an identical manner.

The premium charged is based on the information contained in the application submitted by you. Review the application to ensure that the details provided are in order, and where you are not sure, discuss with the Insurer. Where the application requires amendment, confirm in writing, and the premium will be re-calculated in accordance with the premium rating formula and the premium amended.

8. **Q. Is the premium rating formula the same for all practices?**

- A. The premium rating formula has been divided into two groups:
- Insureds with total gross fees of \$50,000 or less for the last three fiscal years as per their annual financial statements, are eligible for the minimum premium.

Insureds providing in-house engineering services or Insureds which provide significant services in the past are not included in this category.

- Insureds with total gross fees of \$50,001 and above during the last three fiscal years as per their annual financial statements.

9. **Q. What is the Fixed Premium?**

- A. The Fixed Premium is the premium charged for the Period of Insurance.

10. **Q. What happens in the event of a claim?**

A. The Insurer is open during normal business hours.

Your duties in the event of a claim are the second General Condition shown in the Pro-Demnity Policy as follows:

**WHAT YOU MUST DO:**

- a. **NOTICE:** As soon as YOU become aware of a CLAIM. YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding the CLAIM. As events unfold which may have an effect on the CLAIM, YOU must continue to keep THE INSURER informed.
- b. **COOPERATION:** YOU must cooperate with THE INSURER, and, upon request, provide written statements, submit to examinations and questioning, assist in effecting settlement, secure and give evidence and assist in any reasonable way THE INSURER deems necessary. YOU must give this cooperation at YOUR own cost. YOU must promptly pay all CLAIMS EXPENSES over and above the CLAIMS EXPENSES payable by THE INSURER under this POLICY.
- c. **DEDUCTIBLE:** YOU must pay YOUR DEDUCTIBLE promptly upon request.

**WHAT YOU MUST NOT DO**

- a. **ADMISSIONS:** YOU must not admit responsibility, assume any obligation or make any commitment of money or services without THE INSURER'S consent, even if YOU believe there may have been an error, omission or negligent act on YOUR part.
- b. **RECOVERIES:** YOU must not do anything which will imperil THE INSURER'S rights of recovery against any other party.

11. **Q. How is a potential claim identified?**

- A. The proper identification of potential claims can best be made by impartially answering the following questions:
- a) Has any claimant or potential claimant sustained loss or do circumstances exist whereby they may sustain loss which could form the basis of an action for damages?
  - b) Can such a loss be attributed in any way to your professional services or the services of consultants appointed by your practice?

If these questions are answered in the affirmative, the matter shall be reported immediately as a potential professional liability claim.

12. **Q. What happens if I wish to settle a claim by private negotiation instead of reporting it to the Insurer?**

- A. If you embark on such a course you would then be on your own without the benefit of protection from the Insurer.

Always report the claim as it is in your interest and that of the Insurer to work together to settle claims in the most amicable and economic manner.

13. **Q. What happens to my premium if I report all potential claims?**

- A. It is a condition of the Policy that as soon as you become aware of a claim, you must immediately advise the Insurer.

It is not the intention of the Insurer to discourage the reporting of potential claims as experience indicates that early reporting offers the opportunity to resolve claims without payment or litigation. Accordingly, premiums will not be increased due to the reporting of potential claims.

14. **Q. Are predecessor practices covered?**

- A. Yes, if requested in the application form.

15. **Q. Are the interests of professional personnel in respect to previous practice covered?**

A. Yes, if requested in the application form and included as Named Insureds on the Certificate of Insurance. This refers to the interest of professional personnel as proprietors, partners, officers or directors in previous practices which are not a predecessor of the current practice. It is possible that the previous practice has insurance in force which covers former partners, officers, directors or employees which would negate the need for this additional coverage. The one drawback is that the former partners, officers and directors have no means of ensuring that such coverage remains in force.

A former sole practitioner should either maintain coverage on the sole practice or request coverage by the Insurer when completing the application form.

16. **Q. What is the application fee?**

A. It is a charge of \$250.00 payable by holders on filing an application for annual practice insurance. This does not apply to renewal of annual practice insurance. "PST" is applicable.

17. **Q. Why is there a maximum deductible?**

- A. a) It ensures that the deductible selected is reasonable in relation to the Holder's income.
- b) It discourages Holders from accepting deductibles solely to save initial outlays of premium without considering the consequences in the event of a claim payment.
- c) It protects all Insureds against those who cannot meet their deductible commitments due to their having selected deductibles beyond their financial capacity.

18. **Q. Why should we report circumstances which may remotely lead to a claim?**

A. Past experience has shown that where such matters are reported in their early stages, action may be taken to alleviate or nullify the matter before it can develop into a claim.

19. **Q. Is coverage provided for projects completed before insurance is provided by the Insurer?**

- A. The Insurer provides insurance against claims made against you for the first time during the Period of Insurance no matter when the actual or alleged error, omission or negligent act took place.

There are three conditions which must be met for such a claim to be covered:

First, you must have reported the claim to the Insurer during the Period of Insurance.

Secondly, you must have had no knowledge, prior to the Period of Insurance, of such claim or of the circumstances, or a dispute or controversy out of which it arises.

Thirdly, there must not be any valid and collectible insurance available to you, except insurance specifically arranged to apply as excess to the insurance provided by the Insurer.

Also, for your protection, if during the Period of Insurance you report to the Insurer circumstances of an error, omission or negligent act which any reasonable person would expect to subsequently give rise to a claim, then the Insurer will consider these a claim even if a formal demand is advanced against you only after the Period of Insurance.

20. **Q. What should I consider when selecting the limit of liability?**

- A. The following should be considered:

- a) The contract value of your largest projects;
- b) The potential for third party bodily injury or property damage;
- c) The potential for consequential loss claims;
- d) The cost of insurance.

A point to bear in mind is the effect of inflation on remedial work costs. "Today's costs" could well exceed the original contract value of a project completed 10 years ago. Consequential loss claims usually arise in conjunction with remedial work claims and relate mainly to interruption of business, costs of alternative accommodation, loss of profit, etc.

21. **Q. What should I do if I require limits of liability above the mandatory \$250,000 claim limit, and broader coverage than that provided under the mandatory' policy?**

A. The Insurer is able to provide limits of liability of up to \$10 million each claim, and provide enhanced coverage (details in the Guidelines to complete Application), subject to reinsurers' approval.

Should you wish to receive a quotation for increased limits and enhanced coverage, please complete the appropriate question in the application. Alternatively, you may obtain terms from other insurers.

22. **Q. Should all claims be reported to excess insurers?**

A. Where you have excess insurance through other insurers in addition to the mandatory requirement provided by the Insurer, it is recommended that you report all claims and circumstances likely to give rise to a claim both to the Insurer and your excess insurer. Ensure that your notification of claim is acknowledged by the excess insurer.

1/03    *Updated 10/08*    *Updated 4/15*