

THE straight line

TEN MINUTES WELL SPENT | ISSUE 6 | JULY 2018

Welcome to *The Straight Line*

This is the sixth issue of *The Straight Line*, a newsletter that appears several times throughout the year. Articles cover a broad range of topics that engage Ontario architects insured by Pro-Demnity, other OAA members – whether in practice or engaged in other businesses – and anyone with an interest in the profession.

We encourage readers to suggest topics for future issues of *The Straight Line*. Please send any suggestions to: editor@pd-straightline.com

IN THIS ISSUE:

Grenfell Tower Fire

The devastating fire that destroyed the 24-storey Grenfell Tower, a little over a year ago, will have long-lasting and far-reaching implications for building professionals the world over.

Inspections and testing of similar projects immediately after the fire disclosed that none of those installations met the required UK fire resistance standards. As in the UK, Canadian building codes currently allow combustible components in “non-combustible” construction. Can Grenfell happen here?

In our lead article, Gordon S. Grice discusses this unfolding story – its causes, immediate effects and long-term ramifications for architects and others in the building industry.

Piling On

Architects can sometimes find themselves embroiled in multiple overlapping proceedings – civil litigation respecting a claim for damages, criminal or quasi-criminal charges related to breach of regulation or legislation, and Discipline proceedings of the OAA – all stemming from the same incident. The article explains how insurance coverage provided to Ontario architects insured under the Pro-Demnity program helps architects who find themselves in such circumstances.

— *The Editor*

Grenfell Tower Fire

Last June, a fire in London England destroyed an apartment tower and claimed 72 lives. A year later, this tragedy is still in the news and is emerging as an issue of grave concern for building professionals everywhere.



Grenfell Tower fire, 4:43 a.m.

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The Ongoing Story

On the night of June 14, 2017, a horrendous fire engulfed a high-rise apartment building in London, England, killing 72 people and leaving hundreds homeless. The tragedy was featured on international news reels and was a topic of discussion for weeks and months afterward.

Now, over a year later, international coverage has subsided, but the far-reaching consequences of this event, locally and internationally, are becoming more and more apparent. Those of us responsible for designing and constructing tall buildings, wherever in the world they

may be – as well as those who insure us – will be paying close attention.

Almost immediately after the fire, inquiries were launched into the causes and direct consequences of the tragedy. A criminal investigation was initiated by the Metropolitan Police Commissioner – an investigation that would also include the London Fire Brigade. All over the UK, authorities undertook reviews of fire safety and building regulations.

The day after the fire, Prime Minister Theresa May ordered “a full public inquiry.” This inquiry, chaired by Sir Martin Moore-Bick, is ongoing, and continuing

updates, including live feeds, can be found at:

<https://www.grenfelltowerinquiry.org.uk>

To date, these have included reports on the outbreak of the fire, expert witness presentations, opening statements, and commemoration hearings to honour the lives lost in the fire.

In addition, a document entitled *Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Interim Report*¹ was presented to the British Parliament in December 2017. This report, under the guidance of Dame Judith Hackitt, constituted “an Independent Review of Building Regulations and Fire Safety with a particular focus on their application to high-rise residential buildings.” (p. 5) The report proposes nothing less than a complete overhaul of existing systems.

On May 18, 2018, the *Final Report*² was released. In its Overview, it states:

The interim report identified that the current system of building regulations and fire safety is not fit for purpose and that a culture change is required to support the delivery of buildings that are safe, both now and in the future. The system failure identified in the interim report has allowed a culture of indifference to perpetuate.

The phrase “culture of indifference” casts a wide net. It includes, for example, the way that the establishment regards the financially disadvantaged, such as the Grenfell Towers tenants. Of immediate concern to the building industry, the indifference includes regulatory documents; safety compliance processes; product testing, labelling and marketing; undervaluing of residents’ concerns; and general “competence across the system”; but first, and most notably, “the roles and responsibilities of those procuring, designing, constructing and maintaining buildings.” That includes us.

The Event

Like the majority of domestic fires, the Grenfell blaze began with the malfunction of an electrical appliance. According to UK government sources,³ approximately one-quarter of all domestic fires begin as an electrical or appliance failure, but,

significantly, account for only one-tenth of fatalities. In other words, most of these fires are brought under control before tragedy occurs. What made the Grenfell fire different?

First responders arrived on the scene within six minutes of the emergency call and, as *The New York Times* reported:

The blaze began on the fourth floor and spread to the top with a velocity and intensity that stunned the 250 firefighters who responded.⁴

The difference between the Grenfell Tower tragedy and an ordinary kitchen fire is the difference between a simple appliance malfunction and a catalogue of errors, involving building regulations, construction, maintenance, management, and much more.

The Grenfell Tower fire was a huge human tragedy... the result of negligence, possibly criminal, at many levels.

Causes

Later examination by independent agencies revealed that a recent renovation to the building had been performed without due oversight, adequate regulations or sufficient attention to detail, creating a number of “hidden” deficiencies. These shortcomings may not have created a disaster, individually, but in combination created a cascading effect, where back-up safety measures either didn’t exist, or failed. These issues should have been seen and corrected, but weren’t.

Now, a year after the event, the many deficiencies have been catalogued – a survey of the issues identified in current reports can be found on the Pro-Demnity website.⁵ Some of them are shocking, others seem to indicate nothing worse than shoddy workmanship,⁶ notwithstanding the catastrophic consequences:

1. The new exterior cladding incorporated

a lightweight core that was insufficiently fire-retardant. Once the flames reached the cladding, they were able to spread rapidly from panel to panel.

2. The cladding was installed improperly, resulting in a gap between the cladding and the backing wall that was twice as large as it should have been. Although it was only a matter of millimetres, it was sufficient to render ineffective the barriers within the cavity. So rather than providing a deterrent to fire-spread, a chimney effect was created, promoting the spread of the fire.
3. New window frames were too small for the wall openings, leaving large gaps at the jambs. These spaces were poorly filled with material that was not sufficiently fireproof, allowing the flames to spread easily from interior to exterior and vice versa.
4. Unidentified combustible insulation was used on the spandrel beams.
5. Many apartment doors had malfunctioning or missing door closers, making containment of smoke virtually impossible.
6. Deficiencies in firefighting facilities included poor building access, wet rising mains replaced by dry rising mains, absence of sprinklers and fire extinguishers that were out of date or condemned.

The net effect of these inadequacies was that a small electrical fire in flat 16 on the fourth floor was able to quickly penetrate the exterior wall and ignite the flammable cores of the cladding panels. The flames then quickly spread vertically due to the chimney effect, and re-entered the building, floor by floor. By the time the firefighters arrived, the building was virtually a pillar of fire.

Significance

The impact of the Grenfell fire on the building industry around the world cannot be underestimated. While many of the causes of the fire can be attributed to specific problems in the building itself, one issue stands out from the rest, as a global concern: the cladding system, which is similar or identical to systems used all over the world, proved to be a fire hazard. As the Pro-Demnity report points out, when, following the fire, the

cladding components were tested for non-combustibility, they failed the tests. Earlier this month, the UK Ministry of Housing, Communities and Local Government tabled a consultation paper entitled “Banning the use of combustible materials in the external walls of high-rise residential buildings.” The consultation will wrap up on August 14 of this year.

As a result, some building owners in the UK are taking no chances; insurance claims have begun to appear, demanding that “non-compliant claddings and products used on their buildings be replaced, at the designers’ and contractors’ expense.” As we have noted, the use of these materials is not confined to the UK, and so building owners in other parts of the world may be expected to follow suit.

The resulting flood of claims is likely to occur over a short period of time and will strain the manpower and financial resources of insurers everywhere. In this event, it’s unlikely that claims will be settled quickly, implying that, either many buildings will remain unsafe, or building owners will be forced to invest enormous amounts of their own money

in the hope of being reimbursed by insurers in the future. In the meantime, insurance rates, building ownership, rental costs, and apartment unit availability will not remain unaffected.

Post Script

Every day, we are subjected to a constant barrage of distressing news, reporting tragedies and atrocities around the world. Amid this constant barrage, the Grenfell Tower fire in West London is one disastrous event that should catch the attention of all of us involved in the building industry. Quite apart from the professional ramifications, involving important legal and insurance matters, the Grenfell Tower fire was a huge human tragedy. It was not the result of terrorism, ethnic or religious conflict or any deliberate criminal act. It was simply the result of negligence, possibly criminal, at many levels. To the extent that architects are sworn to protect the public safety, such building catastrophes should be carefully observed and lessons learned.

This is a complex, unfolding story and significant facts with important

consequences have yet to emerge. Watch this space for further developments.

Notes

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/668831/Independent_Review_of_Building_Regulations_and_Fire_Safety_web_accessible.pdf
– accessed 14 May, 2018
2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf
– accessed 18 May, 2018
3. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/618561/infographic-fire-statistics-england-1516.pdf
– accessed 30 July, 2018
4. <https://www.nytimes.com/2017/06/14/world/europe/uk-london-fire-grenfell-tower.html>
– accessed 14 May, 2018
5. <http://prodemnity.com/wp-content/uploads/Plan-Credit-Bulletin-March-2018.pdf>, page 5
– accessed 18 May, 2018
6. <https://www.standard.co.uk/news/london/shock-grenfell-dossier-reveals-disastrous-refurbishment-turned-tower-into-a-tinder-box-a3814866.html>
– accessed 18 May, 2018

Piling on: how architects can face overlapping civil, regulatory and disciplinary actions.

Did you know that, as members of a regulated profession, architects can find themselves facing multiple proceedings arising from the same conduct or incident?

For example, architects may find themselves embroiled in Civil litigation claiming damages arising from alleged negligence, as well as facing charges related to contravention of Regulations such as building code or other legislation, and may be subject to Discipline proceedings of the OAA – all stemming from the same circumstances.

The architect has no control over these initiatives taken by others, nor the sequence of these multiple proceedings.

The primary interest of a professional liability insurer is the Civil action. A professional liability insurance policy typically provides the insured with a defence of this action as well as

paying damages on behalf of the insured, when warranted. Nonetheless, adverse rulings in the Regulatory or Disciplinary proceedings can have a significant impact on an insurer’s ability to provide an effective defence in the Civil action.

(Continues on next page)



Piling On (continued)

In order to address this reality, your Pro-Demnity policy includes additional coverage in Endorsement No.1 that can assist you with necessary legal expenses. In addition, Pro-Demnity is able to defend you when there are multiple proceedings, which include:

Item 8. Defence Cost Coverage against Contravention of Statutes:

The insurer will pay defence costs on your behalf where you face prosecution alleging contravention of certain statutes and regulations.

Item 10. Parallel Discipline Proceeding Defence Cost Coverage:

The insurer will pay defence costs for lawyers to assist you defend a

complaint referred to the OAA Discipline Committee by a member of the public, provided an insurance claim has been made against you (e.g. a Civil action) that is related to the same issue and is covered by your insurance policy.

In each of these, there is a maximum payable by Pro-Demnity of \$100,000 for each action and a \$200,000 aggregate; counsel must have been appointed or approved by Pro-Demnity.

Endorsement No. 1 also includes provisions related to reimbursement of defence costs incurred in prosecutions for criminal negligence causing bodily harm or death in contravention of specific sections of the Criminal Code,

as well as reimbursement of defence costs incurred against allegations of Intentional Acts. In each instance conditions apply, there is a maximum limit and you must be found innocent to qualify for the reimbursement.

The above is a précis of the available coverage. Full wording of the actual coverage for these issues will be found in Endorsement No.1 to the applicable Pro-Demnity Policy. Your Certificate of Insurance, applicable Policy and any Endorsements thereto will determine coverage. Nothing herein revises or amends the policy or your coverage.

— Pro-Demnity Staff

Our Contributor



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Questions related to the professional liability insurance program for Ontario architects may be directed to Pro-Demnity Insurance Company. Contact information for the various aspects of the program can be found on the Pro-Demnity website:

www.prodemnity.com

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