

AN ARCHITECT'S QUICK GUIDE TO EXAMINATIONS FOR DISCOVERY

Your architectural firm has been named in a litigated claim alleging errors, omissions or negligence, and you've been asked by your Pro-Demnity lawyer to attend an examination for discovery. This isn't your first project under pressure, and it won't be your last.

The good news? With the right preparation from Pro-Demnity, you will walk into your discovery steady and ready for any question that comes your way. This article provides a brief guide of the discovery process, so you know what to expect.

WHAT IS AN EXAMINATION FOR DISCOVERY?

An examination for discovery is an important part of almost every civil lawsuit in Ontario. It is an out-of-court examination under oath of the parties to an action. Every party to the dispute is entitled to examine every other adverse party. The process helps the parties uncover facts, test credibility, and assess liability and damages.

WHAT CAN THE ARCHITECT EXPECT DURING DISCOVERY?

In advance of the examinations for discovery, your legal team will prepare your Affidavit of Documents, which lists all the documents in your possession, control, or power that are relevant to the case. This document will be circulated to all parties to the action. Your legal team will schedule a preparation meeting to review these documents, go over the details of the case, and consider questions that you might be asked.

In our post-COVID world, most examinations for discovery take place on Zoom. When you log onto the Zoom call, you will be greeted by the court reporter who will be transcribing the evidence. The lawyers representing the other parties in the action will be present.

At the onset of the discovery, you will make an affirmation that you will tell the truth. The lawyers will then begin the discovery.

TYPES OF QUESTIONS YOU MAY ENCOUNTER DURING DISCOVERY

You can expect to be asked a wide range of questions regarding your involvement in the matter at hand. Here are some categories of questions that you can expect:

- Experience and qualifications
- Architectural contract
- Scope of work
- Design development
- Explaining your drawings
- Construction phase involvement
- Involvement of others (contractors, subconsultants, etc.)
- Industry practice and standards
- The allegations as outlined in the Statement of Claim or Third-Party Claim

Throughout the discovery, your lawyer might be asked to provide “undertakings”, which are formal commitments to provide information or a document at a future point in time. Your lawyer will keep track of all undertakings and help you gather what is needed when your discovery is complete.

YOU’VE GOT THIS

Prior to any discovery, Pro-Demnity will provide you with more detailed guidance and important tips on how to handle the examination like a seasoned pro and help you navigate the discovery process with confidence. No matter how tricky things might get during a discovery, your Pro-Demnity-appointed lawyer will be by your side to support you.

Our Contributor



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