



Explaining the Technical Requirements Schedule and Water Ingress Coverage Requirements

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INTRODUCTION

Ingress of precipitation through a building envelope, often referred to as water ingress, has been a major source of claims against Ontario architects for decades. In the 1980s the primary issues involved masonry wall failures, leading to the development and adoption of the “rainscreen” – primary and secondary planes of protection with provision for drainage to the exterior of precipitation that penetrated beyond the exterior face of the cladding – now the accepted minimum standard applicable to most exterior cladding systems.

In the late 1990s, architects were facing a significant and growing number of water ingress claims involving face-sealed, non-drained exterior wall systems that, if unchecked, threatened the financial viability of the OAA’s professional liability insurance program. This was not unique to Ontario – the British Columbia “Leaky Condo” crisis had triggered catastrophic losses for professional liability insurers and loss of PLI coverage for many architectural practices. Where available, coverage for Water Ingress claims was subject to conditions imposed by the insurer, including use of drained cladding assemblies, involvement of recognized building envelope specialists and extended warranties from suppliers and contractors.

Recent data and information available to Pro-Demnity confirms that water ingress claims continue to be a significant factor impacting Ontario architects. The current push for “more – faster – cheaper” combined with other factors impacting the risks faced by architects and other design professionals related to Ingress of Precipitation claims provide the backdrop for this article. We encourage architects to take the time to review the contents carefully. Your practice’s financial viability may depend on it.

COVERAGE REQUIREMENTS FOR INGRESS OF PRECIPITATION (WATER INGRESS) CLAIMS

Since 2004, in the wake of the British Columbia Leaky Condos catastrophic insurance losses, Pro-Demnity Insurance Company and its predecessor, the OAA Indemnity Plan, has excluded coverage for ingress of precipitation (water ingress) claims.

However, when the architect’s design meets specific requirements as outlined in the former *Non-Drained Exterior Wall Exclusion* (Endorsement 3 in the prior policy) and *Window Wall*

Endorsement, OR the recently released *Technical Requirements Schedule*, the architect will have coverage for professional liability claims related to ingress of precipitation.

The consistent requirement for ingress of precipitation coverage remains unchanged – a “drained” or “rainscreen” assembly as described in Part A, Item a) of the *Technical Requirements Schedule*. The only exception applies to a solid masonry or concrete exterior above-grade wall “where drying of the masonry or concrete is not adversely affected by any other exterior building material”. Recognizing other practical, regulatory and building code requirements, use of such walls for occupied spaces will be rare.

WHAT HAS CHANGED

On February 1, 2024, Pro-Demnity advised Ontario architects about the Refreshed Pro-Demnity Policy wordings that would come into effect for each practice at the time of their next annual practice renewal, on or after April 1, 2024:

NEW: Refreshed Policy Wordings

In the 2024 Refreshed Policy wording, the coverage exclusion for ingress of precipitation, the *Non-Drained Exterior Wall Exclusion*, has been relocated to Exclusion 21 of the policy.

The Pro-Demnity February 1st notice also advises of the creation of a new schedule to the policy – that forms part of the policy – called the *Technical Requirements Schedule*.

Together, Exclusion 21 and the *Technical Requirements Schedule* replace the former *Non-Drained Exterior Wall Exclusion (Endorsement 3)* and the *Window Wall Endorsement*.

PRECAST CONCRETE CLADDING CONSIDERATIONS

The new *Technical Requirements Schedule - Part B* provides an alternate, additional means of achieving coverage for ingress of precipitation for an exterior above-grade wall assembly that utilizes precast concrete panels in a non-drained / non-rainscreen configuration.

Since January 1, 2010, the *Non-Drained Exterior Wall Exclusion* has provided coverage for claims for ingress of precipitation for buildings with exterior wall assemblies using precast concrete panels, provided that the “Precast Concrete walls were designed and constructed as drained systems utilizing two stage drained joints”.

However, Pro-Demnity became aware that some architects have been designing exterior claddings using precast concrete panels in non-drained configurations that would not meet these requirements for ingress of precipitation coverage. For instance, where an architect or its client has opted to utilize single-wythe precast concrete panels in a non-drained assembly, the architect would not have coverage for ingress of precipitation.

It also became apparent that some architects had accepted incorrect advice that a drained or rainscreen assembly was NOT a requirement for Pro-Demnity’s ingress of precipitation coverage if “two-stage drained joints” were specified and provided.

The new *Technical Requirements Schedule - Part A*, Items A.g) and A.h) clarifies that BOTH a drained assembly AND two-stage drained joint methodology are required for the architect to have coverage for ingress of precipitation.

After much analysis, consideration and consultation with industry experts, Pro-Demnity also added a new route to water ingress coverage for architects designing non-drained exterior wall assemblies utilizing precast concrete panels as described in Part B of the *Technical Requirements Schedule*.

UNDERSTANDING THE TECHNICAL REQUIREMENTS SCHEDULE

The *Technical Requirements Schedule* includes Parts A, B & C plus applicable Definitions.

Part A includes a list of types of exterior wall systems and components for which coverage for ingress of precipitation / water ingress is already provided.

Part B is new, addressing water ingress coverage requirements for a non-drained assembly utilizing Precast Concrete panels.

Part C addresses water ingress coverage requirements for Window Wall.

PART A - EXTERIOR ABOVE-GRADE WALL SYSTEMS

Part A replaces the list of requirements for water ingress coverage for listed systems and components included in the former *Non-Drained Exterior Wall Exclusion (Endorsement 3)*.

Where an exterior wall assembly is not specifically listed in Part A, provision A.a) of the *Technical Requirements Schedule* applies. Exempted from Exclusion 21 are:

- a. 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

If the design and constructed exterior wall assembly comply with the requirements of Part A there is no need to consider the requirements in Part B or Part C.

PART B- ARCHITECTURAL PRECAST CONCRETE EXTERIOR WALL ASSEMBLIES

The intent of Part B is to provide support to architects using cladding systems utilizing Precast Concrete panels that would otherwise not have water ingress coverage. It is considered an expansion of available coverage for ingress of precipitation.

Some architects have been concerned that Pro-Demnity is adding a new restriction on coverage related to precast concrete panels. This is not correct. With Part B, Pro-Demnity is providing an additional coverage option.

Provisions A.g) and A.h), continue to provide ingress of precipitation coverage for exterior wall assemblies utilizing precast concrete panels “designed and constructed according to rainscreen principles utilizing drained and vented two-stage joint methodology” without any need for involvement of additional Independent Building Envelope Consultant’s services, or adherence to other requirements called for in Part B.

Please note the introductory paragraph at the top of Page 2 of the *Technical Requirements Schedule* that starts with the words: **“In addition, (to the preceding provisions in Part A.) we will cover You...etc.”**

Under the refreshed policy wording and the *Technical Requirements Schedule*, architectural practices now have the option, but not the obligation, to secure water ingress coverage for precast concrete claddings that are not used in a drained system configuration by adopting the provisions in Part B. Use of this option will be each practice’s decision and might vary by project depending on the circumstances.

PART C - WINDOW WALL SYSTEMS

The former *Window Wall Endorsement* (included with every Pro-Demnity policy since July 28, 2009) is now replaced by Part C of the *Technical Requirements Schedule*. The new *Technical Requirements Schedule* requirements include the following updates to reflect the passage of time and experience gained over the last 15 years. Updates include:

- *Window Wall Systems* are now defined in the Definitions section of the *Technical Requirements Schedule*.
- *Independent Building Envelope Consultant (IBEC)* replaces the term *Independent Consultant* and is defined in the Definitions section of the *Technical Requirements Schedule*.
- Updates reflect the addition of OBC, Division B, Subsection 5.9.4. *Other Fenestration Assemblies*, which includes provisions for the minimum performance of Window Wall systems, including,
- Updating the referenced standard to *CSA A440.6 High Exposure Fenestration Installation*.
- Clarification that shop drawings, test reports, mock-ups, and the warranty to be provided by the Window Wall manufacturer include “transitions and seals to adjoining assemblies and materials”.

- Clarification that the IBEC maintains professional liability insurance, is engaged as a “member of the design team for the project” and may not be a “principal or employee of an entity providing Tarion Registrar Bulletin 19 services on the project”; all as called for in the Definitions.

DEFINITIONS

The *Technical Requirements Schedule* includes a list of definitions applicable to the contents of the Schedule.

Perhaps the most significant definition included in the *Technical Requirements Schedule* applies to the acronym “IBEC”:

“IBEC” means an Independent Building Envelope Consultant which is an architect holding a Certificate of Practice, or professional engineer holding a Certificate of Authorization with relevant Precast Concrete building envelope or Window Wall experience that:

- i. *has demonstrated experience with the use of Precast Concrete Wall Assemblies or Window Wall Assemblies respectively;*

- i. *maintains professional liability insurance with claim limits not less than the limits maintained by **You**, and in no case less than \$1,000,000 per claim, \$2,000,000 in the aggregate;*

- i. *is engaged as a member of the design team for the project, either by the client or by **You**;*

i. *is not a principal or employee of Your practice, unless:*

a. *the principal or employee of **Your** practice acting as the IBEC on the project holds a recognized Building Science Specialist designation (BSS) administered by the Building Science Specialist Board of Canada (BSSB);*

- *they were not the principal or employee of **Your** practice who prepared **Your** design; and*

- *independent documentation of their provision of recommendations and review of **Your** design within the meaning of clauses B., b), i) and ii) and C., b), i) and ii) above, is maintained in this schedule; and*

- *is not a principal or employee of an entity providing Tarion Registrar Bulletin 19 services on the project.*

Another definition that eliminates a possible source of confusion applies to Part A, item f):

“Solid masonry or concrete walls” shall not include Insulated Concrete Form (ICF) systems or Precast Concrete Panels; (underling for emphasis)

As noted in the discussion of Part C – Window Wall Systems, Window Wall is also defined, filling a gap that existed at the time the original *Window Wall Endorsement* was prepared. The definition

draws on the terminology developed by a Task Group updating the National Building Code - 2015
- Other Fenestration Assemblies:

“Window Wall Systems” means a window wall considered to be a wall cladding assembly (which may include fenestration and opaque portions) that spans from the top of a primary floor structure to the underside of the next higher primary floor structure. Window wall assemblies do not generally support vertical loads other than their own weight. Primary provision for anchorage occurs at head and sill connections with the adjoining floor structure. Window wall assemblies may include separate or integral floor edge covers.

CONCLUSION

Architects are encouraged to familiarize themselves with Exclusion 21 and the referenced *Technical Requirements Schedule*, including the applicable definitions, to better understand the requirements to be met if the architect is to have coverage for ingress of precipitation on the projects they design.

Architects are also reminded that coverage determinations can only be made at the time a claim arises, based on the allegations against the architect and the then-known circumstances. However, architects whose past projects’ design and construction complied with the former *Non-Drained Exterior Wall Exclusion* and *Window Wall Endorsement* OR whose current and future projects comply with the new *Technical Requirements Schedule* can be confident that they will have coverage for Ingress of Precipitation (Water Ingress) claims on those projects.

Please also remember that Pro-Demnity will never endorse any assertion made by any product manufacturer, industry association or other entity related to coverage provided by your Pro-Demnity policy. Architects are encouraged to contact a member of the Pro-Demnity Risk Services team with any questions regarding the *Technical Requirements Schedule* as may apply to specific situations.

The information provided in this article related to coverage for ingress of precipitation claims is

based on the available sample Pro-Demnity policy wordings. However, architects are cautioned to check their own policies for any amendments to their own coverage that may apply. *This summary of the Technical Requirements Schedule is intended to assist you in understanding your coverage and is not a substitute for the actual Policy wording. Please refer to your Policy document for complete terms, conditions, and exclusions.*

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