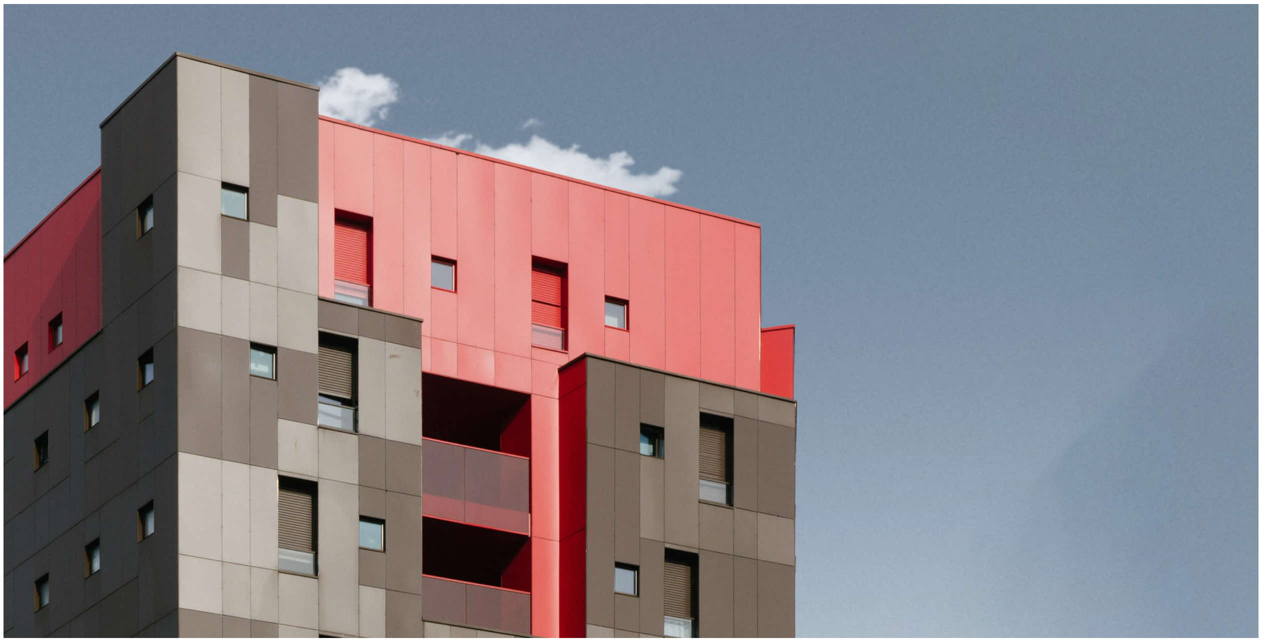


HOW TO MANAGE YOUR CLIENTS AND MINIMIZE CLAIMS

INTRODUCTION

Risk, as we know, is everywhere, all the time. There are small risks, like going outside without shoes, and large risks, like investing your family savings on a “hot tip.” Every venture presents a potential loss and a potential gain. In professional practice, risk exists in all sizes, but by carefully managing these risks, we have some assurance that the rewards will outweigh them.

When we consider project risks, we often limit our concerns to easily quantifiable criteria – things that have facts and figures attached – such as contractual obligations, rules and regulations, fees and schedules, technological issues, etc. But when it comes to the more unquantifiable aspects of a project, such as our dealings with our clients, we tend to let faith and optimism guide our actions.

While these positive feelings may provide comfort, we might be overlooking the fact that our clients are also exposed to risks, some of which may also seem unquantifiable, until they file an insurance claim, with a precise dollar value attached.

Pro-Demnity files provide ample evidence that client relationships are critical to risk management. In many cases, better rapport might have reduced the amount of a claim. In other cases, better client management from the outset might have averted the claim altogether. In a few notable instances, Pro-Demnity has succeeded in achieving “remedial” client management – i.e., smoothing the waters and lessening the severity of a claim, even after it has been filed.

CLIENT MANAGEMENT STRATEGIES

The Canadian Law of Architecture and Engineering, outlines four considerations for avoiding claims by avoiding clients and projects that may be problematic, due to:

a. Feasibility – Are the client’s goals realistic?

b. Resources – Can the client really afford it?

c. Marginalizing requirements – Is the client looking to cut design and supervision costs, while still demanding all the certifications? This is a classic. And keep in mind that your liability may extend to future users and owners of the property.

d. Self-Appraisal – Be sure that the project lies within your capabilities and experience.4

The authors recommend that if the client and project don’t meet these criteria, turning the work away may be the smartest decision you ever make. But once you’ve decided to take on a client, it’s important to be risk-proactive. Here, gleaned from Pro-Demnity’s claims experience, are twelve ways you can manage risk by managing clients in your own practice.

1. **Know who your clients are.** Are they experienced in working with architects? Try to understand their psychology and decision-making process as best you can, and establish their “client profile.” Is this a first-time client, building a dream-home, with a predominantly personal investment? Is it a developer making a (possibly risky) real estate investment? Is it a multi-tiered corporation spending shareholders’ funds, or a cultural/ institutional client digging into the public coffers? Being aware of these things will help you to build an effective, and possibly lasting, professional relationship (See CHOP, 2.2, p. 5)

2. Discuss **your client's desired level of involvement** in the process and establish rules of interaction that are practical and productive. Over-engaged clients can present real risks if they circumvent your authority, or pressure you into making unwise choices. Under- or un-engaged clients may create risks that result from decisions postponed or invoices not paid. (See CHOP, 2.2, p. 5)

3. **Make sure your client understands what architects and their consultants do.** If the client is sufficiently interested, there are very good books available. Just make sure you both share an understanding of your professional role.

   We are convinced that our risks would be less if everyone better understood what an architect is and does… since who people think we are is greatly determined by who we lead them to believe we are.
   – Atkins and Simpson, Managing Project Risk 5

4. More specifically, **why did your client approach your firm** with this project in the first place? What is your client hoping you will do? Paint a clear picture of project-specific roles and responsibilities. Make sure your client knows and agrees with what you will be doing and understands what they will be required to do. Confirm your decisions with a signed agreement. One of the best ways of minimizing risk is to spend time with the client at the outset and carefully discuss the client-architect agreement, clause by clause. – Canadian Handbook of Practice 6

5. Ensure that you and your client have **common goals** that are clearly defined and that you both use the same means of measuring your success in achieving those goals.

6. Present yourself with **appropriate professional confidence**. This will help determine how you will be perceived, treated and possibly remunerated. Remember that you represent the voice of authority on many subjects, but don't claim expertise in areas where you and your firm are not experts; consider politely rejecting work that is not in your wheelhouse (See consideration (d), above.)

7. **Use standard contracts.** Some clients will seek an unfair advantage by using their own contracts or inserting "murder clauses" into standard forms. Seek legal advice when this happens. Make sure you both have the same understanding of what you are agreeing to; and be certain that you understand the insurance implications of any clause the client proposes.

   People sign contracts not because they've negotiated their meanings, but based on their own understanding of what they're agreeing to … Contracts written by lawyers on behalf of a business might have a different meaning than what the lay person understands. – Chris Stokel-Walker 7

8. **Time and money** are the twin gods of design and construction. Be straight-up when discussing budgets and schedules, and monitor them ceaselessly. Project authority and experience in these discussions, but don't be reluctant to acknowledge uncertainty – and obtain specialists' support where needed.

9. When it comes to **disbursements and charges** for additional work, be straightforward, proactive and reasonable. Your client may already be feeling the pinch, and additional expenditures may just add insult to injury. As architectural writer H.B. Creswell puts it: *[Extra fees and expenses are] justified only by their reasonableness, [and] it sometimes happens that the owner and architect discover, perhaps for the first and only time, that their ideas of reasonableness differ. 8*

10. **Manage expectations from the very outset, and consistently thereafter.** Pro-Demnity files are packed with examples where a client's "dreams were dashed" when the architect tacitly encouraged or failed to discourage unachievable or unrealistic objectives. In far too many Pro-Demnity cases, we hear words to the effect: "I trusted my architect and they let me down." (See consideration (a), above.)

    [T]he vast majority of claims against design professionals are not rooted in design errors or omissions but rather are the result of not meeting client expectations. Ultimately, design professionals need to do a better job in establishing and managing client expectations in order to effectively manage their risk. – CNA/Hardy 9

11. **Write everything down.** Everything. And get your client to sign off at key milestones. Don't confuse an amicable architect–client relationship with a reduced need for documentation. Pro-Demnity claims that revolve around poor record keeping are too numerous to mention.

12. **Maintain communications** – before, during and after your involvement in the project. Phrases such as "If I had only known …," "this was a complete surprise to me," "I just assumed …," when uttered by a client, too often accompany an expensive claim. It's much better to hear, "Thanks for keeping me in the loop …. I've got another project I want to talk to you about."

These last two points are not unique to architectural practice, but because architects are imagined to be (and need to be) detail- and people-oriented, they deserve special attention.

CONCLUSIONS

Economists like to say that everything is quantifiable. If you can't assign a number to something, it doesn't exist. Insurers generally concur – insurance involves, among other things, a way of assigning a dollar value (quantum) to things that have gone wrong. The colour of a red door, for example, has no objective value; but if the door was supposed to be blue, repainting it will have a precise dollar value.

Client contracts, agreements and other documents certainly fall into the quantifiable category, but client relationships not so much. What is the dollar value of patience, a timely piece of advice, an air of wisdom and confidence, or a capacity for understanding – not to mention the brilliance of a design solution? Yet, in the absence of these qualities, their dollar value may become immediately – often extravagantly – apparent, in the form of a claim that might have been avoided by establishing and maintaining effective client management from the start.

It has been stated that good architecture is not possible without a good client. To ensure good architecture, the architect must be dedicated to establishing and nurturing successful *relationships with all clients.– Canadian Handbook of Practice 10*

In this maxim, “good architecture” includes “a successful architectural practice,” since no practice, even one that produces amazing architecture, can survive for long without good client relationships. By maintaining a climate of understanding, especially in things that are unquantifiable, financial loss and risk to reputation can often be avoided.

Contact our Risk Services team if you’re facing any client-related risks and speak with Pro-Demnity’s in-house architects for further guidance and on-on-one confidential support.

NOTES

1. Beverly M. McLachlin and Arthur M. Grant. The Canadian Law of Architecture and Engineering, Third Edition. Toronto: LexisNexis, 2020, p. 44.

2. Roger K. Lewis. Architect?: A Candid Guide to the Profession. Third Edition. Cambridge MA: 2013, p. 185

3. Ibid, p. 236

4. James B. Atkins, FAIA, FKIA & Grant A. Simpson, FAIA. Managing Project Risk. Hoboken NJ: Wiley, 2008, p. 211

5. RAIC. The Canadian Handbook of Practice (CHOP), Third Edition, Ottawa: RAIC, 2021, Ch. 3.8, p. 6

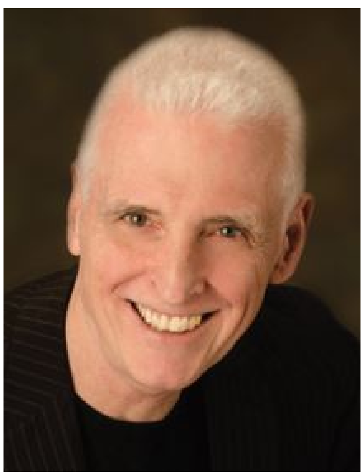
6. Chris Stokel-Walker. “The commas that cost companies millions” BBC Worklife, 23rd July 2018

7. H.B. Creswell. The Honeywood Settlement. London: The Architectural Press, 1986, p. 10

8. CNA/Hardy,”Managing Client Expectations to Effectively Manage Risk.”

9. RAIC, op.cit., Ch. 2.2, p.1

OUR CONTRIBUTOR



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