



## **New: Excluded Services Endorsement**

### **WHAT IS THE EXCLUDED SERVICES ENDORSEMENT?**

Simply, the Excluded Services Endorsement excludes coverage on Construction Phase Architectural Services when an Architect is ALSO providing Delivery of Construction Services on the same project.

The new endorsement in Pro-Demnity policies better defines the distinction between Construction Phase Architectural Services as the usual and customary services of an Architect, from the Delivery of Construction Services, which is not usual or customary.

It also serves to further strengthen the existing Exclusion 1.g. in all policies that already excludes: *“the performance of services not usual or customary for holders of certificates of practice, or members of THE ASSOCIATION (the OAA)...”* from coverage. Architects adhering to their usual and customary Professional services, are not negatively affected by the Excluded Services Endorsement. In fact, just the opposite is true.

The Excluded Services Endorsement continues to ensure that the Professional Liability Insurance Program reinforces an equitable playing field for all architectural practices with respect to covered professional liability risks. It's just one of the many ways Pro-Demnity is your protective professional ally.

## WHY IS THE EXCLUDED SERVICES ENDORSEMENT NEEDED?

Some Architects have chosen to expand their business models to include the Delivery of Construction Services under a variety of names – including *Contractor*, *Project Manager*, *Construction Manager*, *Design-Builder*, etc.

The OAA (and likewise, Pro-Demnity) does not have a specific prohibition against an Architect (i.e., a licenced member of the OAA) from participating in the Delivery of Construction Services using a different business entity to do so; however, those “Delivery of Construction Services” activities **are not** regulated by the OAA and, **are not** considered “*usual or customary*” services of an architect.

Subsequently, the Delivery of Construction Services fall outside the coverage that the mandatory Professional Liability Insurance Program is intended to provide to Ontario architects.

## IMPACT TO INSURANCE WHEN AN ARCHITECT WEARS “TWO HATS.”

Where the Architect takes on two roles with respect to a project – as the Architect responsible for the design, construction documentation, Construction Phase Architectural Services (i.e., General Review, Contract Administration, or both), AND as a participant in the “Delivery of Construction Services” on the same project, Pro-Demnity’s ability to provide a defence to the Architect is being prejudiced.

The arrangement has exposed the mandatory program to construction activity risks that significantly increase the exposure to costs and liability for construction-related claims for

damages than the Architect would otherwise be exposed to. Damages that should be assessed against the party delivering the construction services (i.e., a contractor, project manager, construction manager, design-builder, etc.) are being transferred to the Architect.

## WHAT ARE CONSTRUCTION PHASE ARCHITECTURAL SERVICES?

The “*usual and customary*” services of an Architect (i.e., holder of a Certificate of Practice) acting in a professional capacity include two types of Construction Phase Architectural Services:

- *General Review Services* – monitoring and reporting on the progress and quality of the construction of the project, and;
- *Contract Administration Services* – including Payment Certification, Construction Contract Document Interpretation, consideration of changes to the Contract Price and Project Schedule, preparation of Change Orders, etc.

The role of the “Consultant” responsible for Contract Administration is as described in the Construction Contract (or contracts) between the Owner and the Contractor (or other entity) responsible for delivering the construction.

The latter category of services requires the Consultant (i.e., Architect insured by Pro-Demnity) to act as a “neutral” showing preference to neither party to the Construction Contract. Failure to meet this obligation constitutes Professional Misconduct under the *Architects Act* and Regulation thereto.

An Architect may provide one or other or both categories of Construction Phase Architectural Services, in accordance with its contract with the Owner (the Architect’s Client).

When the Architect ONLY provides Construction Phase Architectural Services in accordance with their professional role, professional liability *remains a covered risk*.

## NEXT STEPS

The [Excluded Services Endorsement](#) will be added automatically to new Pro-Demnity professional liability insurance policies as well as upon renewal, effective January 1, 2022.

Read [Wear only your architect's hat to keep your coverage intact](#) or the [FAQs](#) for more about this topic, and [contact us](#) with any Risk Management or Underwriting questions. If your business model includes the Delivery of Construction Services, please contact your legal and insurance advisors.

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