

## **NEW: FAQs for the refreshed Professional Liability Insurance Policy**

On January 30, 2024, Pro-Demnity announced that its Professional Liability Insurance Policy is updated to be clear, easy to read and understandable, while maintaining the same great robust coverage as always for architectural practices.

The refreshed Professional Liability Insurance Policy includes a new Technical Requirements Schedule and reflects more explicit coverage terms that align with our best practices.

Please read the [Announcement](#) which accompanies the FAQs below. The refreshed Professional Liability Insurance Policy comes into force on April 1, 2024, upon your firm's next renewal.

### **What is happening with my professional liability insurance?**

Pro-Demnity has **refreshed** its professional liability insurance policy wordings to make coverage clearer and more explicit, aligned with industry best practices. This update will take effect on April 1, 2024, upon renewal.

### **Here is a breakdown of the key updates:**

1. Policy 1 (previously for Mandatory Limits) and Policy 4 (previously for Increased Limits) are now integrated into one policy: Professional Liability Insurance Policy.
2. Standard Endorsements and Extensions are now integrated into the one policy.
3. Overall intention for the re-fresh is to:
  - Ensure professional liability coverage is consistent for all policyholders regardless of limits chosen.

- Offer one policy that includes all requisite endorsements.
- Align words with deeds. Ensure that wordings are clear, easy to understand, such that they reflect how we interpret and apply the terms and clauses in practice across all departments: Underwriting, Risk Education, Risk Services, Claims and Legal.
- Make the overall tone friendlier and more readable.

### **What is driving the need for refreshed policy wordings?**

- Innovation and continuous improvement to our services and products are fundamental to Pro-Demnity's strategic plans over the next three to five years.
- We're building on our promise to provide an alliance for protection to Ontario's architectural firms, actively considering and responding to client and employee feedback.

### **What is Pro-Demnity planning in underwriting? How does it affect me as a Certificate of Practice policyholder?**

- We are improving and enhancing our underwriting program.
- Our intention is to improve the new application and renewal experiences for all Certificate of Practice holders and make it easier to do business with us.

- We've initiated a four-phase **underwriting project** that aims to address:
  - policy wordings (Phase 1)
  - pricing model (Phase 2)
  - updated processes (Phase 3)
  
  - enhanced Technology (Phase 4)
  
- On January 30<sup>th</sup>, 2024, we announce the modernization of professional liability insurance policy wordings (Phase 1).

### What are policy wordings?

- Policy wordings are **a detailed explanation of your coverage**.
  
- They describe what is covered under the policy and any endorsements, exclusions, conditions, or limitations that apply.

### Is my coverage changing?

- Coverage has been *clarified* in over a dozen sections in the policy so that it is more understandable and clearer, in modern, plain language. See <Announcement> for specific references to clauses where coverage terms are clearer.
  
- Below are the sections of the policy, where wordings are more explicit. Certificate of

Practice policyholders are encouraged to pay attention to the following sections which may influence business decisions:

- **Mandatory arbitration sub-limit on expenses if it is required in a contract. :**

*“If You have agreed, in a contract for professional services, to a mandatory arbitration or other type of dispute resolution clause that removes or restricts Our ability to defend You, and there is a Claim made that relates to such contract, the maximum amount of all Damages and Claims Expenses that we will pay on Your behalf or reimburse to You shall not exceed \$50,000 for one Claim and \$100,000 for all Claim(s) reported during the Period Of Insurance”.*

This sub-limit will take effect for contracts signed on or after **July 1, 2024**. It is intended to encourage Certificate of Practice policyholders to pay particular attention to Dispute Resolution clauses in contracts which erode protections from Pro-Demnity that would otherwise be yours. *[How much We will pay: Our limit(s) of Liability and Your Deductible. Important Sub-Limits and Reductions to Limits of Liability. Item 6]*

- For policyholders with Mandatory limits, the **claims expense limit cap** has increased from \$200K to \$300K when there is excess insurance with another insurer. This is harmonized with the coverage available to policyholders with Increased limits. The cap limit remains \$300K for policyholders with Increased limits. *[How much We will pay: Our limit(s) of Liability and Your Deductible. Section C. Item 2.]*
- The Precast Concrete Panels/Cladding is a new standard endorsement added to the Policy. To comply with coverage requirements, please refer to the Technical Requirements Schedule.
- Reference to a Plan Credit has been removed from the policy wordings.
- Claims stemming from communicable diseases are excluded from coverage.
- A Sanction Limitation and Exclusion Clause has been added.

## When does the refreshed policy take effect?

- The refreshed policy wordings will take effect starting April 1, 2024, upon renewal.
- For example, if your next renewal is March 15, 2024, then the refreshed policy wordings will be in force upon renewal on March 15, 2025.

## What is different between my existing policy and the refreshed version that takes effect on April 1, 2024?

Coverage language is generally more overt in the refreshed policy wordings. Being explicit ensures that the interpretation of coverages or limitations is clear and accurately reflects our existing practices.

## We draw your attention to the following instances where coverage language is more explicit:

1. **Addition of a new sub-limit in cases where Mandatory arbitration is required in a contract:** *"If You have agreed, in a contract for professional services, to a mandatory arbitration or other type of dispute resolution clause that removes or restricts Our ability to defend You, and there is a Claim made that relates to such contract, the maximum amount of all Damages and Claims Expenses that we will pay on Your behalf or reimburse to You shall not exceed \$50,000 for one Claim and \$100,000 for all Claim(s) reported during the Period Of Insurance".*

This sub-limit will take effect for contracts signed on or after **July 1, 2024**. It is intended to encourage Certificate of Practice policyholders to pay particular attention to Dispute Resolution clauses in contracts which erode protections from Pro-Demnity that would otherwise be yours. *[How much We will pay: Our limit(s) of Liability and Your Deductible. Important Sub-Limits and Reductions to Limits of Liability. Item 6]*

2. **Standardization of the Claims Expense limit when there is excess insurance with another insurer:** The Claims Expense limit is capped at \$300K when a policyholder, “specifically arranged professional liability insurance that applies as excess to the insurance provided by...[Pro-Demnity].” The Claims Expense limit is now the same for policyholders of either mandatory limits or increased limits. *[How much We will pay: Our limit(s) of Liability and Your Deductible. Section C. Item 2.]*
  
3. **Clarification of “jurisdiction”:** we make it clear that where a project is located outside of Canada, Pro-Demnity only covers claims brought forward in Ontario unless we have explicitly agreed to cover them elsewhere, based on the information you provide in your application for professional liability insurance. This is consistent with our current practice and provides greater clarity than our current wording. *[What is Covered? Items 3. 4. 5.]*
  
4. **Clarification of coverage related to Fee Disputes:** claims arising out of a fee dispute are not covered. This reinforces our current practice and policy wording. *[Exclusions: What is Not Covered. Item 3]*
  
5. **Clarification of coverage related to Geotechnical engineering and Surveying Services.** The *performance or engagement of* geotechnical engineering services or services that constitute the practice of cadastral and professional surveying under the *Surveyors Act*, are not covered. This reinforces our current practice and policy wording *[Exclusions: What is Not Covered. Item 17]*
  
6. **Clarification of Liability of Others Assumed Under Contract.** Any liability of others **You** have assumed under contract or other agreement (whether written or oral), except that **We** will cover **You** for **Your** liability for **Insureds**, provided that **Your** liability would have already existed at law in the absence thereof. *[Exclusions: What is Not Covered. Item 6]*
  
7. **Clarification of Liability to Others Assumed Under Contract.** Any liability to others **You** have assumed under contract or other agreement (whether written or oral), except that **We** will cover **You** for **Your** liability for **Insureds**, provided that **Your** liability would have already existed at law in the absence thereof. *[Exclusions: What is Not Covered. Item*

8. **Clarification of coverage related to Communicable Disease Outbreak.** Claims related to public health emergencies are not covered or government regulation related to same is not covered. *[Exclusions: What is Not Covered. Item 19]*
  
9. **Clarification of coverage related to Strikes.** Claims related to labour strikes are not covered. *[Exclusions: What is Not Covered. Item 20b.]*

### Why do policy wordings need to be made more explicit?

We are ensuring that the refreshed Professional Liability Insurance Policy clearly reflects our best practices. Language used in the previous Policies 1 and 4 were often vague, resulting in inconsistent interpretations. In making the protections easier for principals / architects to read and understand, we also endeavour to illuminate potential risk areas for architectural firms, which are exposures that Pro-Demnity seeks to reign in with respect to the broader risk of claims that may negatively impact our program of insurance for all Ontario firms.

### What are the “usual and customary” services of an architect?

- Refers to work typically done by an **Architect OAA** in the scope of their work in the Province of Ontario and may include elements of work both within an **Architect OAA**'s protected scope of practice and outside that protected scope of practice.
  
- In determining what is **Usual and Customary**, **We** may refer to reference materials such as standard **OAA** contracts, the **Canadian Handbook of Practice**, **OAA** bulletins and practice advisory notices, any of **Our** published bulletins and guidelines, in force from time to time and generally accepted architectural practices in Ontario.

## What is the Technical Requirements Schedule?

- All technical requirements previously referenced in Standard Endorsements and Extensions (i.e., ingress of precipitation, the new Precast Concrete Panels/Cladding Standard Endorsement, etc.) will now be reflected in a separate *Technical Requirements Schedule*.
- This Schedule is part of your contract of professional liability insurance and may be updated from time to time as technical requirements change, without us needing to re-write our endorsements or policy wordings.
- Any updates to the *Technical Requirements Schedule* will always be communicated to you prior to coming in force.
- It is very important that you share the *Technical Requirements Schedule* with your team: architects, project leaders, specifications experts, etc., so that they may reference them when designing and to ensure that designs comply with available coverage. This is an additional risk management measure to potentially help you stay abreast of potential claims.

## Why is Pro-Demnity placing a sub-limit on mandatory arbitration?

- Mandatory arbitration accepted by architects through their contracts, diminishes Pro-Demnity's ability to provide the most vigorous defense possible in the event of an allegation of error, omission, or negligence against the architect.
- In practice, we've seen this punishing clause applied only to the architect on a project and not to others who may be more liable (i.e., constructor, contractor, consultants, manufacturer, etc.). This is not fair to architects.



- Close to 100 % of claims still go through a mediation process prior to arbitration. This is the normal process in an action against an architect. When a mandatory arbitration clause is imposed on an architect, the reality is that mediation is skipped altogether for a costlier process that also adds time to the proceedings.
- Arbitration is a more expensive process than going to court. The costs of an arbitrator/judge, the room rental, and other associated costs to subsidize this process are borne by Pro-Demnity.
- **This limit will apply to contracts for professional services entered into on or after July 1, 2024.**

#### Why are claims stemming from communicable diseases excluded?

- Claims related to public health emergencies as well as government regulation related to same are not covered. *[Exclusions: What is Not Covered. Item 19]*
- The recent COVID-19 pandemic and associated lockdowns resulted in understandable delays across all sectors and industries.
- See: [COVID-19 Practice Risk Resources - Pro-Demnity - Architect Liability Insurance \(prodemnity.com\)](#)

#### Why is the Plan Credit no longer offered?

- In practice, a Plan Credit has not been imparted to any architectural practice in over seven

years.

- We appreciate that some firms may have found this to be of benefit to them in the past.
- Pro-Demnity is obligated to ensure the financial stability of the overall program of insurance for architectural practices in Ontario, secured through annual rate changes and appropriately calibrated pricing based on actual claims experience of the profession as a whole.

### Why is there a Sanction exclusion?

- This is a standard exclusion for organizations operating in Canada in the insurance/financial services sectors.
- No **Insurer** shall be deemed to provide cover and no **Insurer** shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose that **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Canada, or the USA.  
*[Exclusions: What is Not Covered. Item 28]*

### Why are Geotechnical Engineering and Surveying Services an exclusion?

- The *performance or engagement of* geotechnical engineering services or services that constitute the practice of cadastral and professional surveying under the *Surveyors Act*, are not covered.

- This stronger language reinforces our current practice and policy wordings [*Exclusions: What is Not Covered. Item 17*]
- These services are not part of the usual and customary services of architects and as such are excluded from coverage.
- Pro-Demnity encourages architectural practices to be mindful of taking on risks or uninsured liabilities associated with Geotechnical engineering and Surveying Services.

### **Why are Libel and Slander excluded from coverage?**

- Professional Liability Insurance provides coverage for allegations of, or actual, errors, omissions or negligence arising from your professional services as an architect.
- Professional misconduct matters (i.e., speaking ill of a colleague or others, etc.), are the purview of the OAA as the Regulator for the profession.
- This clause was previously known as “Dishonest acts”, now part of “Intentional Acts” in the refreshed policy wordings.

### **What is a material misrepresentation?**

- Anything we ask about in our application for professional liability insurance is material.
- You are obligated to advise us, when there are changes to that information. (i.e., mergers

and acquisitions, changes in services offered, changes in ownership, change of address, change of jurisdiction, etc.,).

- Anything material that changes, might require us to change our decision.

### **Why does Pro-Demnity reserve the right to Survey and Review?**

- From time to time, Pro-Demnity may need to have more detailed information from you.
- We reserve the right to audit and inspect key information that may have a material bearing on your professional liability insurance coverage, premium, deductible or a claim.

### **Why does “jurisdiction” need to be clarified?**

- Our policy wordings are more transparent with respect to this coverage, reflecting our current practice. Our intent here is to be clear with respect to the existing, available coverage.
- Where a project is located outside of Canada, Pro-Demnity only covers claims brought forward in Ontario *unless* we have explicitly agreed to cover them elsewhere, based on the information you provide in your application for professional liability insurance. *[What is Covered? Items 3. 4. 5.]*
- Jurisdiction represents a different element of risk for you and your professional liability insurer. Dealing with claims outside of Canada potentially means engaging with a different Code of Law, legal system, or court system. It also requires the incurring of additional costs

and expenses related to appointing local lawyers as well as potential ongoing travel to and from other jurisdictions to represent the firm in a claim. Typically, jurisdictions outside of Ontario may generally be significantly more costly.

- It is therefore important that premiums for coverage in another jurisdiction reflect these risks.

### **If I have a claim in the US, what happens to my limits?**

- If a claim is brought in the United States, or its territories and possessions, then expenses incurred are “within” the limits purchased.
- As at January 2024, we have 44 policyholders with foreign jurisdiction.

### **Is ingress of precipitation coverage no longer offered? (i.e. Standard Endorsement 2 or 3).**

- Ingress of precipitation is not covered, *except* when designs comply with the technical requirements outlined in the *Technical Requirements Schedule*, which also forms part of the policy.
- All Standard Endorsements are now embedded within the Policy in the *Exclusions: What is Not Covered* section.

### What is my coverage if I assume liability of others under contract?

- Any liability of others **You** have assumed under contract or other agreement (whether written or oral) is excluded from coverage, except that **We** will cover **You** for **Your** liability for **Insureds**, provided that **Your** liability would have already existed at law in the absence thereof. *[Exclusions: What is Not Covered. Item 6]*
- The errors, omissions, negligence of others aren't covered by your professional liability insurance, nor have these risks been priced in the premiums.

### What is my coverage if I assume liability to others under contract?

- Any liability to others **You** have assumed under contract or other agreement (whether written or oral) is excluded except that **We** will cover **You** for **Your** liability for **Insureds**, provided that **Your** liability would have already existed at law in the absence thereof. *[Exclusions: What is Not Covered. Item 7]*

### I own an Architectural Practice and also have an interest in a construction / real estate development firm. How is my coverage affected?

- Claims made by the non-architectural entity against the Certificate of Practice are not covered where the Architect's equity, ownership or voting rights in that entity exceed 10%.
- Claims against the Architect by third parties are covered regardless of the involvement of the other entity in which the Architect has an interest (exceeding 10%), subject to the terms and conditions of the Policy.

- Third parties would include anyone other than the particular entity in which the Architect has an interest, for example, clients, subsequent owners of the building, tenants, other parties engaged in the construction process and members of the public.
- See *Excluded Services Endorsement* Information: [Wear only your Architect's hat to keep liability insurance intact - Pro-Demnity - Architect Liability Insurance \(prodemnity.com\)](#)

### **What is a claims-made policy and how does it work?**

- Professional Liability insurance – also known as Errors & Omissions (E&O), Professional Indemnity (PI), and occasionally as Malpractice insurance – are typically Claims-Made policies.
- It is an insurance policy that covers claims first presented during the current policy term arising from incidents which happened during the same policy year *or for any previous year going back to the retroactive date.*
- Fundamentally, a Claims-Made policy covers everything that has happened in the past or current year that triggers an allegation of wrongdoing in the present policy term.
- Every policy issued by Pro-Demnity is Claims-Made. The policies most of us are familiar with (i.e. home, auto, office, general liability, etc.) are Occurrence policies.

*Example:* If you had \$2M in coverage last year, but this year you have a \$500K limit and you file a notice of claim this year, your available limit is \$500K.

- Professional Liability Insurance is Claims-Made – Pro-Demnity – Architect Liability Insurance (prodemnity.com)
- Why You Must Understand “Claims Made” Insurance... – Pro-Demnity – Architect Liability Insurance (prodemnity.com)

### What limits will apply to my claim?

- The basic coverage you have with Pro-Demnity and the deductible are based on your firm’s gross revenues, so depending on the size of your firm you will fall into one of three tiers (see chart below).
- The premium you are charged is based on the claim limits you qualify for and our valuation (supported by actuarial data and historical precedence) of how much it could cost to defend the claim and what would potentially have to be paid out:

	<b>Total Gross Fees:</b> <b>\$0 to \$499,999</b>	Total Gross Fees: \$500,000 to \$999,999	Total Gross Fees: From \$1,000,000
Claim Limit	\$250,000	\$500,000	\$1,000,000
Project Limit:	\$500,000	\$1,000,000	\$2,000,000
Aggregate Limit:	\$1,000,000	\$2,000,000	\$4,000,000

- **Total Gross Fees:** Revenue declared in your financial statements + fees for services by contractors + reimbursable expenses
- **Claim Limit:** Refers to the maximum amount of coverage for any one claim



- **Project Limit:** Refers to the maximum amount of coverage for any one project assuming there were multiple claims
- **Aggregate Limit:** The total coverage that could be paid per year if you had multiple claims for different projects

### Will my premiums go up if I provide notice of a claim or have a claim?

- Your premiums do not increase if you provide us with notice of a claim or several notices of potential claims. We strongly encourage the reporting of potential claims as it provides us with opportunity to work with the architectural practice to resolve the issue before it escalates further.
- We do review rates for each architectural practice on an annual basis, and future premiums are likely to be impacted when claims are severe. These are evaluated on a case-by-case basis.
- For firms with multiple, frequent and severe claims within a narrow reporting period, we do apply a Claims Expense Contribution (CEC), a type of deductible.
- The CEC is applied against the expenses (not Damages) that are incurred by Pro-Demnity to defend the firm.
- Only 1 % of architectural practices are subject to the CEC.
- The intention of the CEC is two-fold:

1. To better apportion the costs of defending high frequency claimants, since when individual firms incur repeated costly claims, all policyholders are unfairly affected.

2. To help those firms in this small group understand that their claims frequency is high and to encourage them to take action to address that issue.

- See: [Claims Expense Contribution \(also known as Claims Expense Deductible\) - Pro-Demnity - Architect Liability Insurance \(prodemnity.com\)](#)

### **Can I hire my own lawyer to defend me in a professional liability lawsuit?**

- No. Your professional liability policy - and the premiums you pay - include legal representation from lawyers appointed by Pro-Demnity who are highly qualified and have specialized experience in defending architects. We pride ourselves in vigorously defending architects.
- Pro-Demnity has an outstanding in-house team of litigators as well as a cadre of external lawyers. Pro-Demnity will appoint legal counsel appropriate to the claim that is brought forward.
- What makes Pro-Demnity very unique is that we have in-house architects who also review claims alongside an experienced claims management team and our in-house legal team. This is a distinct advantage to our policyholders.
- Pro-Demnity may, at its own discretion, appoint the lawyer of a Certificate of Practice if they meet our criteria and comply with our strict litigation guidelines.

## How do I calculate my deductible?

- If the final Incurred Damages are less than \$250,000, then Your Deductible will be reduced proportionately to the amount of Damages incurred.
- The Pro-Demnity professional liability policy includes a “disappearing deductible” that has the Certificate of Practice paying a pro-rata share of its full deductible for damages paid up to \$250,000.

*Example:* If damages amount to \$100,000 (i.e., 40% of \$250,000), the architect pays only 40% of the deductible.

- 100% of the deductible applies for damages at or above \$250,000.
- If the Deductible amount payable is less than \$200, we waive the requirement for you to pay the Deductible.

## When does the deductible apply?

- Deductible only applies where DAMAGES are awarded NOT EXPENSES (unless the Claims Expense Contribution applies.)
- Your Claims Professional will advise you when the Deductible is due.

## Who may I speak with for help?

- For policy-related questions, the Underwriting team may be reached at 416-386-1770 x3 or [mail@prodemnity.com](mailto:mail@prodemnity.com).
- For guidance on specific risk situations that you may be facing, please contact our Risk Services team and book a meeting to [Speak with an Expert](#).
- General information may be found on this website.

## Do I need to do anything before April 1, 2024?

You may:

- Familiarize yourself with the refreshed Professional Liability Insurance Policy and the Technical Requirements Schedule when you receive these with your renewal package.
- Share the Technical Requirements Schedule with everyone who designs in your architectural practice including other architects, interns, specification writers, project managers, etc.
- Review your contracts for mandatory arbitration clauses and note the sub-limit that will come into force effective July 1, 2024.
- Otherwise, please wait to hear from the Underwriting team as you typically would 60 days prior to renewal.

- Review your renewal documentation and respond as soon as possible, and at least 30 days prior to your renewal date to ensure no interruption to your coverage.