THE BEST CONTRACT FOR AN ARCHITECT TO USE

Pro-Demnity has provided many articles and Bulletins encouraging the use of the readily available standard forms of contract for the provision of architectural services provided by the OAA. Failure to adhere to this advice is a common factor contributing to Professional Liability Insurance Claims incurred by Ontario architectural practices.

This Article supplements two relevant articles available on the Pro-Demnity website:

- Three Reasons to Have a Signed Contract (May 1, 2025)
- Why Architects Should Use OAA contracts (Feb 6, 2023)

Pro-Demnity's risk management advice **consistently emphasizes** the importance of a written contract with every client and subconsultant on every project. This advice draws on over 35 years of experience managing and settling claims on behalf of the Ontario Architects we insure.

One of the common questions we hear in response is "*What contract should I use?*" or sometimes, "*Does Pro-Demnity have a sample wording I can use?*" This article addresses those questions.

It concludes with a recommendation that Architects take full advantage of **OAA Document 800-2021A** – *Standard Short Form of Contract for Architect's Services*, as their own "Standard Terms and Conditions" respecting the provision of their architectural services. This should be partnered with **OAA Document 900-2021A** – *OAA Standard Form of Subcontract Between Architect and Subconsultant* when retaining services of any engineering or other specialty subconsultants.

WHAT IS A CONTRACT?

A good starting point is to remind ourselves of four elements of an enforceable contract:

- **An Accepted Offer** … between the parties. There are many ways an offer and acceptance related to the provision of architectural services can be accomplished. A simple example is where an architect offers to provide its services for a project to a client and the client accepts the architect's proposal.

- **Consideration** … what each party promises to do or deliver to the other. In our most common example, the Architect promises to deliver a specific scope of architectural services to a client for a project. In return the client promises to compensate the Architect by paying an agreed fee and reimbursing expenses incurred by the Architect.

- **Competence of the Parties** … the Agreement must be between individuals who are of sound mind (are sane), and old enough to be legally considered an adult (18 in Ontario). When representing a business entity, the individual must have the authority to bind or make enforceable commitments on behalf of the business.

- **Legality of Purpose** … a contract to undertake an illegal activity is not enforceable by a court. An example we hope you are NOT familiar with is where an architect with an OAA seal agrees to assist a non-architect – perhaps an engineer or non-professional designer such as a BCIN – practice "architecture" in Ontario. If an Architect agreed to apply its OAA seal on work carried out by a non-architect, the Architect would be in breach of the *Architect's Act* and Regulation and the agreement to do so would be for an illegal purpose. If the Architect wasn't paid by the non-architect, the Architect would not be able to rely on the contract

with the non-architect (oral or written) to collect what the non-architect had agreed to pay for the improper use of the Architect's seal.

ORAL OR WRITTEN CONTRACT?

A Contract may be oral or written. An oral contract is based on the spoken word, a written contract is in writing. Both may be binding and enforceable; although with an oral contract, if a dispute arises, it will be rare to have both parties remember the terms the same way. The well-known adage, *An oral contract isn't worth the paper it's written on (or not written on)* applies time after time in claims or litigation involving Architects. A court will accept that there was a contract between the parties; however, one or both parties may be surprised at the conclusion the court reaches regarding what was agreed to, when their memories differ.

Nearly as undesirable is where a one-line email might be the only written portion of a contract, leaving the court to read-in any number of "implied terms" to that contract.

Pro-Demnity consistently advises Architects that they should insist upon a written contract in their dealings with a client – the project owner – and with any subconsultants they retain.

Three Reasons to Have a Signed Contract

However, we are regularly surprised to find an Architect has signed a written contract with its own client – the project owner – while relying on a "handshake" – an oral agreement – with their subconsultants.

And too often the Architect has accepted a subconsultant's written terms and conditions in a subcontract with the subconsultant that are incompatible with the terms and conditions the Architect has agreed to in its own "Prime" contract with the project owner. The outcome can be a serious "gap" between the scope of services the subconsultant has agreed to provide for its fee, and what the Architect has agreed to provide / deliver in its own contract with the owner. These "gaps" can contribute to claims by the Architect's client – the project owner – related to inadequate services provided by the Architect's subconsultant.

Engineer's Standard Terms of Engagement

STANDARD FORMS OF CONTRACTS FOR ARCHITECTS

OAA FORMS

Ontario Architects are fortunate to have several variants of "standard" forms of contracts with clients or subconsultants available "off the shelf" including:

- **OAA Document 600-2021A** – *Standard Form of Contract for Architect's Services*
- **OAA Document 800-2021A** – *Standard Short Form of Contract for Architect's Services*
- **OAA Document 900-2021A** – *OAA Standard Form of Subcontract Between Architect and Subconsultant*

Note: Each of the OAA forms of contract noted above comes in two variants. An "A" following "2021" designates a version for use by an Architect, "LT" signifies the variant for use by a "Licenced Technologist OAA". The RAIC and CCDC forms of contract do not include this Ontario-specific distinction.

Access the OAA Contract Suite.

RAIC FORMS

The Royal Architectural Institute of Canada (RAIC) provides its own forms of standard contract suitable for use in any Canadian province or territory, including Ontario. Provisions are similar but not identical to those found in OAA 600-2021A and OAA 900-2021A. The RAIC has discontinued a short form of contract.

- **RAIC Document Six – 2022** – *Canadian Standard Form of Contract for Architectural Services*

- **RAIC Document Nine – 2022** – *Canadian Standard Form of Contract between Architect and Consultant*

Access the RAIC Digital Contracts Suite.

CCDC FORMS

The Canadian Construction Documents Committee (CCDC) is the recognized provider of construction delivery contracts in Canada. However, CCDC has added several contracts for the delivery of consultant services to its repertoire including:

- **CCDC 15 – 2013** *Design Services Contract between Design-Builder and Consultant* – for design-build projects where the Architect's client is a Contractor acting as a Design-Builder.

- **CCDC 31 – 2020** *Service Contract Between Owner and Consultant* (consulting engineer). Originally adapted from ACEC 31-2010 – Engineering Agreement Between Client and Engineer, we expect it could also be used for architectural services.

- **CCDC 30 – 2018** *Integrated Project Delivery Contract* – 3-way contract between Owner, Consultant(s) and Contractor(s)

Access the CCDC Documents.

The following primarily focuses on the OAA standard forms of Contract OAA 600-2021A (Architect and Client – Long Form), OAA 800-2021A (Architect and Client – Short Form) and OAA 900-2021 – Architect and Subconsultant.

CLIENT-AUTHORED CONTRACTS AND /OR CHANGES TO STANDARD FORMS OF CONTRACT

One of the most common reasons for architects to reach out to Pro-Demnity's Risk Services is to understand the implications of client-authored versions of a contract for architectural services or client-authored amendments (Supplementary Conditions) to the standard forms of contract provided by the OAA or the RAIC.

Many architects may be surprised to learn that – with a few important exceptions – Pro-Demnity itself isn't particularly concerned with what an Architect agrees to in a contract it signs with a client. Nothing an Architect agrees to in a contract with a client will change the scope and limits of the Architect's coverage under its Pro-Demnity policy. The Architect's coverage will not increase or decrease by accepting client-authored amendments. **However, the constant risk is that an**

Architect will agree to financial obligations to the client that will NOT be covered by the architect's professional liability insurance.

These risks include the architect agreeing to the following:

- **Agreeing to Indemnification** wordings that exceed the Architect's existing indemnification obligations "at law". An Architect's obligations to indemnify its client are already established under common law. These obligations are what will be covered by a professional liability insurance policy. Any additional obligations that the Architect agrees to in a contract with a client will NOT be covered by the Architect's professional liability insurance.

- **Agreeing to Dispute Resolution** wordings that will prejudice or eliminate Pro-Demnity's ability to manage or deliver the defence to a claim covered by the architect's insurance. Agreeing to dispute resolution provisions that include mandatory use of arbitration or allow the client to dictate the settlement process are now subject to a sublimit on BOTH defence costs and any damages assessed against the architect of a total of $50,000 per claim, $100,000 annual aggregate. Once those sublimits are exhausted, the architect will be on its own.

  Mandatory Arbitration Jeopardizes Your Coverage with the Stroke of a Pen and Handcuffs your Defense

- **Agreeing to provide services** that fall outside what would be considered "usual or customary". These could include delivery of construction, delivery or retention of surveyors,

geotechnical investigations, and services related to identification and / or mitigation of pollutants or toxic or hazardous substances. **Some clients attempt to include these uninsured activities in an Architect's scope of work, and some Architects fall into the trap of agreeing to provide them rather than saying "no!".**

Retaining Surveyors, Geotechnical and Hazardous Substances Specialists is Dangerous!

The standard forms of contracts with clients for architectural services provided by the OAA and the RAIC avoid these pitfalls.

OAA DOCUMENT 600-2021A

Article A12 has the Client and NOT the Architect providing:

1. *surveys,*

2. *subsurface investigations,*

3. *a list and evaluations of Toxic or Hazardous Substances – as defined in the Definitions section of the contract,*

4. *air and pollution tests, tests for Toxic or Hazardous Substances etc. as reasonably required by the Architect, the Architects Consultants and authorities having jurisdiction, and*

5. *a written legal description of the site*

The **Indemnification** wording GC09 Indemnification and Liability of the Architect – Item 9.1 essentially adopts wording that Pro-Demnity has been providing as "benign" – reflecting an architect's existing liability "at law" – and therefore does not expose the Architect to uninsured liability.

The **Dispute Resolution** provisions in GC 16 have been carefully worded to avoid triggering the Sublimit on defence costs and damages in the Pro-Demnity Policy. For instance, GC 16.5 includes the option of utilizing arbitration being *Subject to mutual agreement*, NOT *at the Client's sole discretion*, and GC 16.6 provides conditions that the Client must include in a construction contract related to the Architect's participation in an arbitration process between the Owner and Contractor.

Schedule 2 – Basic Services and **Schedule 3 – Additional Services** do NOT include services that would fall outside what is "usual or customary" for an Architect to provide, subject to the definitions included in the contract.

However, as noted above, attempts by a client (or the Architect) to amend the dispute resolution wording provided, or change any of the relevant definitions can trigger serious coverage problems.

RAIC DOCUMENT SIX – 2022

RAIC Document Six – 2022 – GC3 Client's Responsibilities identifies the provision of the following as the client's responsibility:

3.2.1 – Legal description and surveys …etc., pertaining to the *Place of the Work,*

3.2.2 – *Subsurface investigation reports…etc*., including a list of and evaluations of Toxic or Hazardous Substances or Materials present at the Place of the Work…etc., with appropriate professional recommendations.

3.3.3 – Air and water pollution tests, tests for Toxic or Hazardous Materials, structural, mechanical, chemical or other laboratory and environmental tests, inspections, field tests and reports with appropriate professional recommendations, and

3.3.4 – All available information on existing buildings, including investigation or condition reports, facility management drawings, and original drawings and specifications…etc.

RAIC Document Six – 2022 – GC8 Indemnification – Item 8.1 combined with GC9 – Limitations on Liability – Item 9.1 limit the Architect's liability to the Client to either:

1. *the amount of insurance coverage … that is available at the time the claim is made*, or

2. *the amount stated (i.e., agreed to) in Article A21*.

RAIC Document Six – 2022 also includes dispute resolution provisions in its GC14 that – unless changed – will not trigger the new sublimit on defence costs and damages payable by Pro-Demnity.

OAA DOCUMENT 800-2021A

OAA Document 800-2021A (6 pages) is somewhat longer than its predecessor *OAA 800-2011* (2 pages); however, it remains much shorter than *OAA Document 600-2021A* (28 pages) or *RAIC Document Six – 2022* (14 pages) and therefore may be less intimidating to many architects and their clients.

The philosophy behind Document 800 is to NOT include provisions that are already addressed by established law, and include only a limited number of provisions that address the most common areas giving rise to disputes where there is no written contract – primarily scope of services to be provided by the Architect and fees to be paid to the Architect by the client.

Importantly, GC05 – Indemnification and Liability of the Architect repeats the same “benign” indemnification wording adopted in OAA 600-2021A.

It avoids many of the other common arguments with a brief description of the Client’s responsibilities in the Agreement – Item A09:

The Client shall provide information regarding existing conditions including the legal description of the property, surveys, soils, and sub-surface conditions, toxic or hazardous substances, reports, services, existing structures, etc., related to the Place of the Work, reasonably required for the performance of the Services, the accuracy and completeness of which the Architect shall be entitled to rely upon.

It does not include a Dispute Resolution provision, relying instead on “silence in the contract”. The reality is that if there is a dispute between the Architect and the client regarding the interpretation of contract provisions related to the obligations of either party, they already have access to any of negotiation, mediation, adjudication, and – if both agree – to binding arbitration as resolution tools. However, if settlement is not reached, the courts remain available as a publicly funded route to final resolution.

An important benefit is that the “Silence in the Contract” approach will not trigger the sublimit on defence costs and damages payable on behalf of the Architect.

CONCLUSION – WHAT CONTRACT SHOULD YOU USE?

ARCHITECT – CLIENT CONTRACTS:

The answer is “It depends!” However, we consistently recommend the use of the OAA’s standard contracts.

In many instances, the Architect isn’t given a choice, and their only option is to accept a client contract or to decline pursuing the commission. For many categories of projects and clients, the decision is in the hands of the client, who includes its form of contract as a prerequisite in its RFP. These can be a set of Supplementary Conditions to one of the available “Long Form” agreements – OAA Document 600 – 2021A (or earlier editions – OAA Document 600-2013 is still used by many clients), or RAIC Document Six – 2022 (or earlier editions).

It may appear that the client is using one of the OAA contracts, however, most often the Supplementary Conditions are so extensive that the original intentions of the underlying standard form are unrecognizable, and the willingness of the client to consider or negotiate changes proposed by an Architect is non-existent. It is only when the client fails to receive enough responses to meet its own procurement criteria that reluctant consideration is given to amendments to the client’s contract.

In effect, the contract terms are considered by the client to be “take-it-or-leave-it”, and it is only when Architects choose to “leave-it” that changes might be negotiated. For some guidance on improving your negotiating position, please visit our 2025 OAA Conference Presentation Resources, which includes our presentation: *David V Goliath: A stone’s throw away to a better negotiating position* or read the summary of this presentation.

LONG FORM OR SHORT FORM?

There is a general assumption that longer forms of standard contracts such as OAA 600 or RAIC Document Six are more appropriate for larger, more complex projects, and shorter forms of standard contracts should be reserved for smaller projects. However, where one draws a clear line, is another “it depends” consideration. There is not a “one size fits all” answer.

For most applications, **OAA Document 800-2021A** – including a Schedule (or Schedules) setting out the agreed scope of services and fees for those services – will provide the essential elements of an enforceable written contract. The OAA provides sample Schedule forms; however, the objective might also be met by attaching e-mails, memoranda, or other correspondence between the client and architect as the Schedule(s).

And as noted earlier, when an Architect is able to propose the form of contract, OAA Document 800 -2021A has the significant advantage of appearing far less formidable to both clients and architects. In addition, to date, it has not generated the same extraordinary enthusiasm by clients (and their lawyers) to dramatically amend it as has been the case for the longer forms of standard contracts.

Unfortunately, despite the OAA's efforts to ensure a fair balance between the interests of clients and architects, many publicly funded client organizations, including Infrastructure Ontario, Boards of Education, Colleges and Universities, Municipalities and their many agencies have invested in extensive efforts to modify the long-form contracts – attempting to transfer their own risks as owners and clients onto the architects / consultants. The same applies to some larger private clients as well. This pre-emptive strike by the clients has made it very difficult, if not impossible, for an architect to negotiate changes. These factors may discourage consideration of the use of a short form of contract, without the client attempting to add a long list of changes it has already invested in to modify the long forms.

ARCHITECT – SUBCONSULTANT CONTRACTS:

Another type of contract that Architects will be party to has an engineering subconsultant agreeing to provide its specialized engineering services to the Architect on a project. In exchange, the Architect (the subconsultant's client) promises to pay an agreed portion of its own fees on the project to the subconsultant.

Many engineering consultants provide their own "Standard Terms and Conditions" with every fee proposal they provide to a potential client – including to architects assuming the role of "Prime Consultant" in its own contract for architectural services with a project owner. **Pro-Demnity's**

consistent advice has been to NOT accept any subconsultant's "standard terms and conditions". More information can be found below:

Engineer's Standard Terms of Engagement

You have insurance…But what about the Engineering Consultants?

RECOMMENDATIONS:

1. Propose or require the use of OAA Document 800-2021A, as your "standard terms and conditions" for every proposal for professional services you offer to a potential client. If your "offer" including the use of OAA Document 800 is accepted, you will have an enforceable contract in place – subject to the accepting client or its representative having the competence and authority to enter into a contract on behalf of the client organization.

- Encourage a potential client to retain any other specialists required for the project directly. This approach has the benefit of avoiding your assuming vicarious or contractual liability for the services (and failings) of these specialists, or financial liability to the engineering or other specialists if your client fails to pay you for your and your subconsultants' services. It may result in lower professional liability insurance premiums as well, since Pro-Demnity will not have to cover the contractual liability for these consultants you might be exposed to if you retain them yourself.

- If you are agreeable to retaining any of the required engineering or other specialists, DO NOT accept any potential subconsultant's "Standard Terms and Conditions". Instead, insist upon use of YOUR standard terms and conditions – being OAA Document 900-2021A – binding the subconsultant to the same terms and conditions you have agreed to in whatever form of "prime" contract you have with the project owner / your own client.

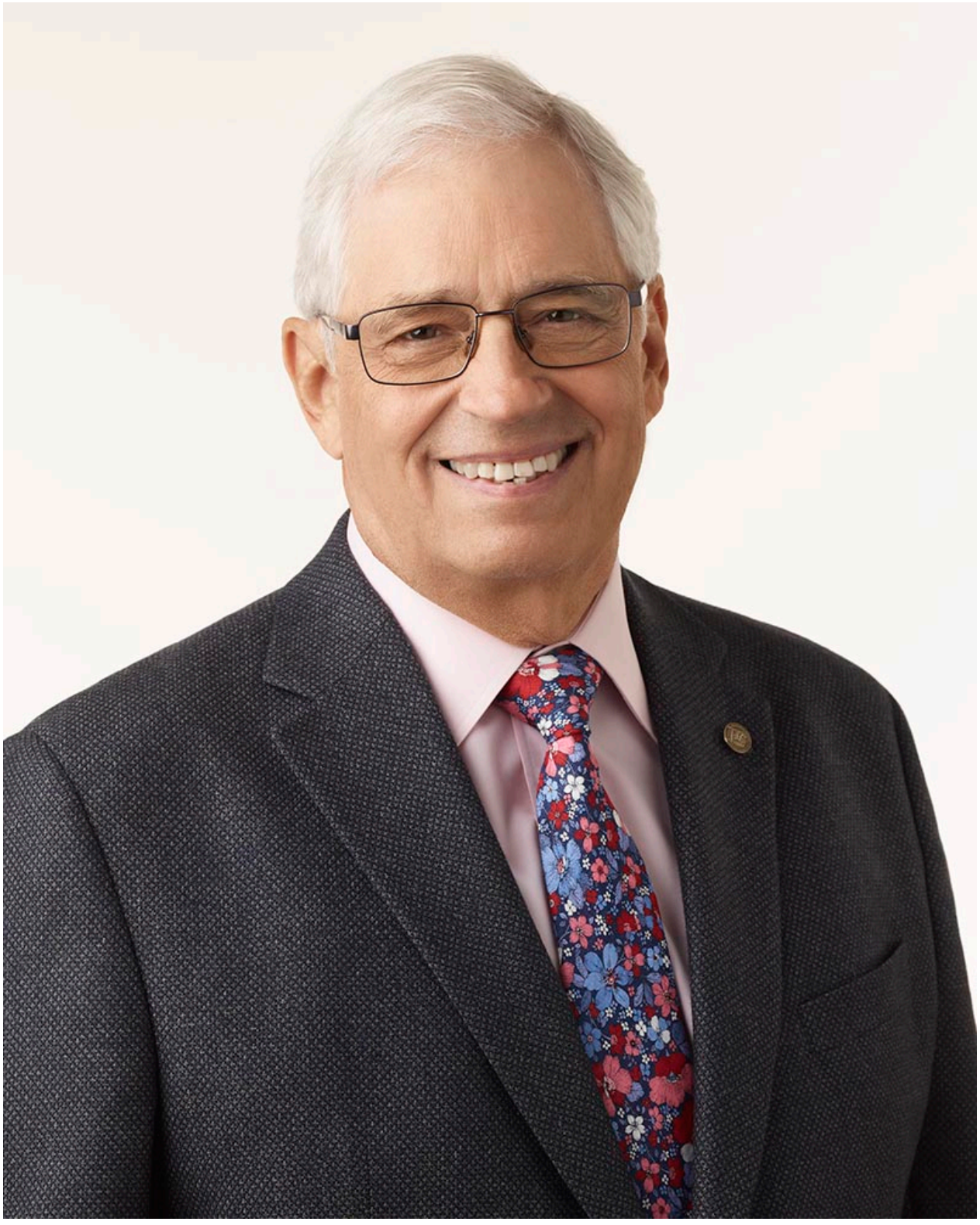
- Pro-Demnity cannot dictate what contract terms you are willing to accept. Notwithstanding our strong recommendation that a written contract is one of your best risk management tools, on very rare occasions NOT signing a contract with unreasonable provisions may be the least "bad" option – other than declining the commission. Before considering this option, be sure to obtain legal advice in the hope of avoiding being deemed to have agreed to the unreasonable provisions based on your actions.

Legal Assistance

PRO-DEMNITY RISK SERVICES SUPPORT:

If you have questions about the content of this article or would like further assistance in dealing with a contract question or other risk management challenge related to your practice, Pro-Demnity Risk Alliance advice can be accessed via Speak with an Expert.

Our Contributor



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responding to Architects' enquiries for risk education and risk services support. He serves as Pro-Demnity's Executive Advisor on the Senior Leadership Team and is an experienced risk management strategic resource. John's expertise spans over 22 years with Pro-Demnity helping architects to understand the risks associated with practice. He also brings significant experience as a previous co-owner of an architectural practice. John has a deep awareness and "architect life experience" to the need and value of professional liability insurance. He has a keen sense and instinct to identify the "trouble" moments and communicate those issues of concern with architects and others. With extensive knowledge of publicly funded institutional clients and projects where stakeholder financial support and successful fundraising are critical, John is a staunch advocate for the profession of architecture and for architects' professionalism.