

## WEAR ONLY YOUR ARCHITECT'S HAT TO KEEP LIABILITY INSURANCE INTACT

### DELIVERY OF CONSTRUCTION SERVICES IS AN EXCLUSION

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 do not have a specific prohibition against an Architect (i.e., a licenced member of the OAA) from participating in the Delivery of the Construction Services using a different business entity to do so; however, those Delivery of Construction 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 applicable coverage that the mandatory professional liability insurance program is intended to provide to Ontario Architects.

The introduction of the Excluded Services Endorsement in Pro-Demnity policies clarifies the distinction between Construction Phase Architectural Services as the usual and customary services of an Architect, from the Delivery of Construction Services, which are not usual or customary.

**The Delivery of Construction Services exclusion was first introduced as an “Excluded Services Endorsement” to all policies starting January 1, 2022, and is now reflected as an Exclusion to the policy as of April 1, 2024. Please refer to Item 29 of the Exclusions section of your policy.**

### HOLD ON TO YOUR HAT

Where the Architect takes on two roles with respect to a project, for example, 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 for their regulated professional services, is being prejudiced by the conflict of interest. Our experience arising from claims where an Architect attempts to wear two hats at the same time through two separate incorporated entities, is that the Architect undermines the strength of their own legal defense as professionals, given the difficulty of separating "Architect Inc." from "Developer Inc." if both are represented and embodied in a single person.

Conflicts of interest in this situation provide an enduring risk regarding future claims, which may come from other parties involved in the project such as contractors or consultants, the owners/users of the building, and people who may be affected by the project, such as adjacent landowners and passers-by.

This dual arrangement significantly increases the exposure to costs and liability for construction-related claims and damages than the Architect participating in the mandatory program, would otherwise be exposed to.

Further, 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.

The Delivery of Construction Services exclusion ensures that the Professional Liability Insurance Program reinforces an equitable playing field for all Architectural Practices with respect to covered professional liability risks.

## **BOLSTERING THE ARCHITECT'S ROLE**

The mandatory Professional Liability Insurance Program provides Ontario Architects with valuable protections and coverages specific to their professional services as Architects.

The Delivery of Construction Services exclusion bolsters the regulated role and status of Architects in Ontario and strengthens the integrity of the mandatory program. By clarifying the insured risk for Construction Phase Architectural Services, we're protecting the mandatory program from inappropriate exposures and enhancing collective trust.

Architects adhering to their usual and customary professional services are not affected by this exclusion. Architectural practices can rest assured that their coverage from Pro-Demnity remains intact when performing their duties in the delivery of Construction Phase Architectural Services (i.e., General Review Services or Contract Administration Services, or both).

To learn more, read the Delivery of Construction Services exclusion (Item 29 of the Exclusions in the policy).