

THE straight line

TEN MINUTES WELL SPENT | ISSUE 13 | DECEMBER 2020

Message from the President

Some people transcend easy categorization, defining themselves through their broad intelligence, unswerving drive, and confident individuality. David Croft is one of those people.

Over decades of service, David crafted a unique reputation as both a tireless defender of architects and a just source of knowledge and experience across architecture, construction, insurance and human nature. From judges to underwriters, those involved in architectural professional indemnity came to respect David's integrity. His work – chronicled in his *Claims Stories*, – reflects his commitment to the profession and his deep understanding of humanity: both its foibles and its strengths.

As notable as David's personal character, is the legacy he has created. At first single-handedly and then with the team he built, David created a group of architects who understand insurance, combined with insurance and legal professionals who understand architects. This approach continues to distinguish Pro-Demnity from other insurers and reflects David's conviction that an architect's perspective is required in order to properly defend an architectural claim.

When looking at the many changes around us, we sometimes overlook all that has stayed the same. With his wisdom, empathy, discipline, innovation, and honesty, David demonstrates the timeless traits of a true professional. As we continue to navigate through these very strange times, we are thankful to have such a strong example to remind us of what is right and just. As a role model and through his irreplaceable *Claims Stories*, David continues to guide us.

We wish David a happy, well-deserved retirement.

— Bruce H. Palmer, *President & CEO*

David Croft – Architect, Advocate, Adventurer, Author ... and Retiree



For over 30 years, David has been a colleague, friend and trusted confidant. Office lunch hours were always packed with discussions on interesting insurance issues.

David developed the role of the mandatory plan claims handler, which combined the roles of insurance claims examiner and adjuster into one person, while providing architectural expertise to every claim, as well as instructing legal counsel and managing the relationship with the architect (the defendant). This was unique. Effectively, he inserted architecture and knowledge of the construction into the claims process, which had previously been dominated by lawyers and insurance adjusters. It was not unknown for a mediator (retired judge) to request David to sit next to him to explain the technical aspects of the building failure – a great compliment. It is reasonable to believe that David

saved the mandatory plan millions in damage payments.

It should also be recognized that David cared and supported his colleagues, friends and family. It was a privilege to have known and worked with him.

*Byron Treves
Former President & CEO,
Pro-Demnity, Toronto*

The name David Croft, OAA, FRAIC is not one that regularly pops up in glossy architectural magazines or awards citations. In fact, many of you may not recognize the name at all – unless, that is, you have been defended in one of the nearly 6,000 claims for professional errors and omissions that Pro-Demnity Insurance (and the Indemnity Plan before that) has handled over the past 30-plus years. In that case, you will

have come to know David well, as the “Claims Manager” (also Vice President of Claims), whose job it has been to protect practices and individual architects, as well as defending the profession against disrepute, embarrassment and loss of stature. This has been no mean feat.

Under David’s steady guidance and according to his example, a growing number of Pro-Demnity staff members – other architects, legal personnel and insurance experts – have been equally engaged in insuring, educating, protecting and defending Ontario architects.

David is retiring at the end of this year, after three decades of service to the profession. There are very few people to whom the word “irreplaceable” might apply, but David may be considered one of them. Among David’s many distinctions:

- He has been acknowledged within the insurance industry as possibly the leading negotiator for architectural claims – an honour that has enhanced the reputation of Pro-Demnity and the OAA, internationally.
- He has established and maintained an exceptionally high professional reputation with Lloyd’s, the world’s largest insurance and reinsurance marketplace, with £74.8 billion in assets and £19.7 billion in premiums.
- He has proven that the claims process is vastly improved by the involvement of architects with knowledge and training in insurance. On the basis

“ I firmly believe that David has shown himself to be at the forefront of professional claims management. His near encyclopaedic levels of construction knowledge together with his oft assertive but always fair approach has instilled an incredibly high level of comfort, trust and respect in everybody that has had the pleasure to work with David. From a personal perspective I have enjoyed his company, wisdom, advice and anecdotes which were infused with his wry sense of humour. – James Rowan, Atrium Syndicate, London, UK

of “architects insuring architects,” overseas reinsurers have demonstrated their confidence in David and his team by declaring them best equipped to handle claims involving their exposure – an exceptional honour.

Background

Born in the United Kingdom, David received his Dip. Arch. (Hons) from Northern Polytechnic in London in 1955. In his early architectural career, he spent several years in Holland before commencing practice in Montreal in 1958. Beginning in 1964 as a partner in Melamed Croft Grainger Architects, he served as a Theme Designer for EXPO 67, designing exhibits for a number of pavilions.

Relocating to the US in 1980, David held several executive positions with major construction and development companies, including four years as Senior Director (Construction) for Campeau Corp. Texas, and gaining his General

Contracting Licence, while constructing a range of large commercial properties. This work led to a consultancy in forensic “work outs,” that immersed him in construction law, and prepared him for his return to Canada and the start of his next career in service of the architectural profession.

In 1989, David joined the OAA managing claims for the newly established Indemnity Plan, now Pro-Demnity Insurance Company. For his conspicuous service to the architectural profession, David was named a Fellow of the RAIC in 2008.

David’s varied professional background has given him the unique expertise to offer pertinent information, advice, support and defence of architects whenever and wherever required. In cases where a claim proceeded to mediation or, very rarely, to court, he provided hands-on support in analyzing, assessing and defending the claim without exception. In addition, he has helped architects in managing the aftermath – professional and financial – as well as the often overlooked emotional fallout.

Most important, David has personified the profession, helping to protect it and the public, as specified in the OAA charter; and he has further defended the Association by demonstrating the benefits of an association-owned insurance company.

David’s activities have sometimes taken him to far-flung places – arctic and tropical – wherever the Ontario architectural flag may fly. He has endured ethnic conflicts, corrupt foreign governments, emotionally abusive legal counsel, overtly aggressive plaintiffs and many other uninsurable perils. He has also been privileged to meet and work with many exceptional people.

“ I first met David thirty years ago, while attending a preliminary meeting about a claim against an architect. In what I soon came to appreciate was his signature style, he spent the first half of the meeting listening to the architect’s explanation of the facts giving rise to the claim and the second half conducting a withering cross-examination, that in all fairness, would be the envy of the most seasoned of counsel. David has an uncanny ability to probe the story and get to the heart of the issue. Always on the architect’s side, David guided the claims process with a steady hand from inception to conclusion. And, his encyclopedic knowledge of the subject matter was always appreciated on all sides, including, albeit begrudgingly, by opposing counsel. – Andrew Lundy, Brunner and Lundy, Toronto

David Croft – Author

Thankfully, he has documented many of these episodes in his first person accounts: *Claims Stories*. Over the past quarter-century (and hopefully into the foreseeable future), these *Stories* have been a pet project for David.

Written in his “spare time,” on weekends, evenings and vacations, the *Stories* have provided both a creative outlet for David, and a godsend for architects, in Ontario and beyond.

The 74 stories are written in a fluid journalistic style, with the aim of informing and engaging architects by introducing the human side of insurance claims.

Every story tells of a unique actual case among the 3100 cases in which David has been personally involved, describing the backstory, the cast of characters, the preparation of the defence, the unfolding drama of the legal processes, and the often surprising outcome. The ultimate goal is to illuminate the errors and omissions of one individual or firm, in the hope that they will not be repeated by another.

To underline this point, David begins each story with the words of John Bradford (1510–1555), upon sighting an evildoer being hanged: “*There, but for the Grace of God, go I.*”



I realize that my first introduction to David was through his written word of his *Claims Stories*. Humorous, poignant, and more than a little nerve-racking to read, the stories depicted circumstances no architect would ever want themselves to be found in. Issue after issue, the stories would land in the office and be passed around. The pitfalls of our profession were laid bare and the truer the stories became. We all got to “know” David in this fashion. – Lesley D. Watson, OAA, FRAIC

“Above all,” David writes, “remember that you are administering a contract and have an equal duty to both parties, admittedly a rather onerous role.”

From David Croft’s *Claims Stories*, and his professional behaviour, we can all gain wisdom about not just architectural practice, but also how to live a productive life.

David teaches us that the least successful strategies are: displaying unfounded self-confidence or self-importance, seeking the advice of inexperienced “experts,” relying on verbal agreements and spending valuable time on assigning blame, when finding solutions would be more effective. The best strategies – past, present and future – are: be reasonable, be logical, be nice and try to maintain your sense of humour.

As Pro-Demnity continues to adapt and grow, David’s mantle will be assumed by several people, with specialized knowledge in architecture, insurance, construction, law, creative nonfiction and human nature. All of these things have resided until now in a single person whose daily leadership will be greatly missed.

*... we have closed the file.
[the architects] are close
to retirement but have
ceased to worry as they
paddle their canoe towards
the midnight sun.*

*David Croft, Claims Stories, Case No. 64,
Issue 17, October 2008*

The Claims Stories

Twenty-seven years ago, Pro-Demnity began publishing *Claims Stories*, case studies of actual claims handled by Claims Manager David Croft.

Architectural practice, it turns out, is not nearly as dreary and uneventful as many people imagine.

The caveat is that the wrong kind of excitement in architectural practice may lead to legal and financial peril. David’s stories follow the mold of the radio show *Dragnet*, later to become a TV show, and a number of movies. *Dragnet* was the progenitor of *Law and Order*, and the model for almost every police procedural in existence.

The show always began with a voice-over announcement: “The story you are about to hear is true; the names have been changed to protect the innocent.”

Fittingly, David’s entirely factual stories begin with the caveat: “names and places changed to protect the innocent, and partially innocent, also the guilty.”

David’s very first story, one of the shortest and least complicated in the collection, appeared in August, 1993. It describes the case of an architect who ventures out of his depth and ends up in deep, dirty water.

Case #1

On a difficult site, an architect exceeds the limits of his expertise and fails in his duty to the owner as “inspector of work,” assuming liability for incorrect work.

PARTIES

Plaintiff

The Hills, Norman and Marie

Defendants

Lucas Bering, Architect
Flood Brothers, General Contractors

(Continues on next page)

The Claims Stories (continued)

Cross Claims

Both defendants against each other

Context

The Hills had requested that Bering design a house for them that would also be suitable for a relative with a disability. The architect designed sloped paths to entrances and avoided steps.

The house required a septic field, but the site was steeply sloped from the rear down to the road. So the architect located the septic field beside house, with landscaping berms around the house and grading that prevented natural run-off. The house was subject to frequent flooding.

Pleas

The Hills stated, “We refuse to pay the balance of the money owed to the contractor, and the holdback, until the problem is solved.”

As against the architect, they stated “We hired an architect to look after the construction of our residence, and we have serious damages that speak for themselves as to liability. Our architect failed in his duty.”

At trial, the owners recounted harrowing experiences of working at midnight in mid-winter, digging trenches to redirect flood water.

The architect Bering’s defence was that he had only indicated the “general arrangement.” The contractor was responsible for the placing of the septic field. Levels and dimensions were to be verified by the

contractor, with discrepancies brought to the attention of the architect, etc. As the architect, he did as much as he was able, giving verbal directions to workers and shooting his own levels.

The contractor Bert Flood claimed that he had recommended to the architect that the house be placed a foot higher, but this suggestion had been rejected. This was confirmed in written evidence. He also claimed that the level of the septic field was determined by the local authority, also confirmed by evidence. He further claimed that the architect had interfered with the work and would not listen to reason.

Judgement

The judge found that both defendants (the architect and the contractor) were jointly and severally liable. The owner had a right to expect the architect to ensure against major errors. The contractor had a duty to protect the owner against errors that were clearly demonstrable.

Claims Control Analysis

The architect should not have intervened in the location of the septic system, but allowed a specialist to do it. He should also have insisted that a landscape architect or surveyor be engaged to advise on such a difficult site. His reliance on oral evidence – “I told him to dig a swale in this or that location” – proved worthless.

The judge did not buy into the idea that “review” is a lesser duty than “inspection.” He stated the architect’s duty by quoting from *Hudson’s*, tenth edition, the

construction law bible: “An architect must properly supervise the works and inspect them sufficiently frequently to ensure that the materials and workmanship conform to contractual requirements ...,” etc.

Post Script

The contractor proved to be insolvent. The architect/Indemnity Plan paid the full cost of the new site drainage system.

Lesson to be Learned

There should be no half measures when it comes time to review the work in progress. Forget the fine print. If you are on the scene of the error and don’t correct it, it will be yours.

As with many of David’s stories a little further analysis, yields even more valuable lessons:

- *When dealing with a difficult site, an architect should hire professional consultants to help with the problems.*
- *Always issue written instructions, have your client sign off, and keep the instructions as records. Memories of verbal instructions are unreliable and of little value in a legal action.*
- *What an architect might call a “review,” a judge might see as an “inspection.”*

Pro-Demnity is planning to republish all the Claims Stories, so that they will be available for architects on into the future.

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is a newsletter for architects and others interested in the profession. It is published by Pro-Demnity Insurance Company to provide a forum for discussion of a broad range of issues affecting architects and their professional liability insurance.

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Design: Finesilver Design + Communications

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Pro-Demnity Insurance Company is a wholly owned subsidiary of the Ontario Association of Architects. Together with its predecessor the OAA Indemnity Plan, it has provided professional liability insurance to Ontario architects since 1987.

Questions related to the professional liability insurance program for Ontario architects may be directed to Pro-Demnity Insurance Company. Contact information for the various aspects of the program can be found on the Pro-Demnity website:

www.prodemnity.com

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