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Risk Management During COVID-19

COVID-19: MATTERS DESERVING IMMEDIATE ATTENTION

The consequences of COVID-19 to the architectural, construction and insurance sectors will be deeply felt, and much discussed in the near future. Three matters, however, deserve immediate attention from architects:

1. Delays and Delay Claims
2. Substitutions to Your Design
3. Personal Injury Claims

Other concerns will certainly arise as the crisis develops, and these will be tackled as soon as they become apparent. In the meantime, it is more essential than ever that architectural practices maintain careful records of all instructions and actions. If you aren't in the habit of doing this already, **start now**.

During the current crisis, with work-from-home protocols and closed borders, it will be difficult to adhere to normal schedules, for a number of reasons. These include: unavailability of even common building materials; slowdowns in professional services; shortages of labour; delays in getting approvals from clients, building departments and consultants; reduced shipping capabilities; and an increase in general indecision and confusion.

Delay, even under normal circumstances, is the enemy of progress. To minimize its effects during the current crisis, architects are encouraged to maintain high professional standards. We cannot stress enough the importance of record-keeping. Beyond that, document everything! Verbal agreements will not be helpful to architects when they are faced with seemingly unfounded accusations related to architectural services provided.

It is a predictable outcome of these circumstances that losses will be suffered by the owners and any number of entities involved in the design and construction process. Unfortunately, despite the unprecedented circumstances, it is certain that

some will attempt to mitigate their losses by pursuing claims against architects and their consultants. Some of these claims may relate to the very measures the architect or others took to aid in the battle against the COVID-19 virus.

We anticipate that three areas, in particular, will benefit from proactive risk management efforts by architects: Delays and Delay Claims, claims arising from Substitutions to Your Design and Personal Injury Claims.

1. Delays and Delay Claims

Delay Claims are a common challenge faced by architects and the Pro-Demnity Claims team. For the duration of the COVID -19 crisis, delays are virtually unavoidable and delay claims equally so.

Architects can help to counter Delay Claims by maintaining normal and expected procedures and standards throughout this crisis. The importance of maintaining comprehensive records of communications with clients, building officials, consultants, contractors, subcontractors and suppliers can't be overstated.

2. Substitutions to Your Design

Inevitably, the supply of specified products and procedures will be impeded during the crisis. This will prompt proposals for substitutions – and approval of these substitutions – on an “emergency” basis. The emergency may be real, and the requests may be reasonable, but it is imperative that architects maintain their professional standards and duty of care in considering the appropriateness of any substitution.

3. Personal Injury Claims

Personal injury claims against architects are a growing challenge. COVID-19 creates a new source of exposure to such claims. As professionals and business operators, architects are obliged to observe all required or recommended measures to help

prevent the spread of the virus. Fortunately, there is ample advice available from public health and other authorities, to assist architects in managing the risk that their actions or inactions may lead to a claim related to personal injury to others. Documenting communication is crucial to establish that the Architect implemented any measures to avoid or prevent any personal injuries.

Pro-Demnity will be on hand to vigorously defend Ontario architects who are faced with such claims – as we already do for any other claims against architects.

However, architects can adopt or reinforce risk management approaches that may make them less attractive targets and strengthen our ability to provide a defence.

THINGS YOU CAN DO NOW

1. Follow all provincial, federal and public health guidance on protective and precautionary measures related to COVID-19.
2. Keep careful and detailed records of actions and instructions related to active projects.
3. Be vigilant and diligent respecting Substitutions arising from fall-out from COVID-19.
4. Manage client expectations with respect to potential delays due to material or labour shortages.
5. Utilize the tools and advice respecting COVID-19 provided by the OAA.
6. Maintain good communications with clients, consultants, contractors and authorities, all of whom are struggling to address COVID-19.