NEW ZEALAND Registered Architects Board

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Cautionary Note 3
Confidentiality Agreements

The New Zealand Registered Architects Board (NZRAB) has been asked by an architect how much he is bound by the confidentiality agreements in leaky building claims which were settled on the basis of there being no acceptance of liability.

The architect's question is whether, when asked about past claims by insurers and potential clients, he can honestly say he has not been involved in any leaky building cases.

Confidentiality agreements typically bind all parties: claimant, builder, architect, building consent authority, their respective insurers, legal counsel and expert witnesses. The confidentiality relates to the naming of parties, the nature of the dispute and all of the details which are the subject of the agreement.

Confidentiality agreements can be waived to the extent that disclosure is required by law, or to instruct one's professional advisors. A PI insurer is one such advisor.

An insurance contract is a contract made in good faith, so it would be prudent to be truthful when responding to insurance proposal questions. Otherwise, an insurer could potentially decline to respond if and when the truth is subsequently revealed.

In principle, if a matter is settled, then that is the end of it. Confidentiality provisions mean that the outcomes – and probably the existence – of a matter are to remain invisible to those not bound by the agreement.

For the architect saying "nothing" when he or she knows there is "something" is difficult. However, disclosing confidential matters to other parties – including other clients or an NZRAB inquiry – would be a breach of the confidentiality agreement, and could expose the architect to legal redress.

The architect's answer, if there must be one, would be to say there is nothing which is relevant to the new client or project. If pressed further, the architect could say there are no outstanding matters, all past matters having been settled on terms bound by confidentiality agreements.