

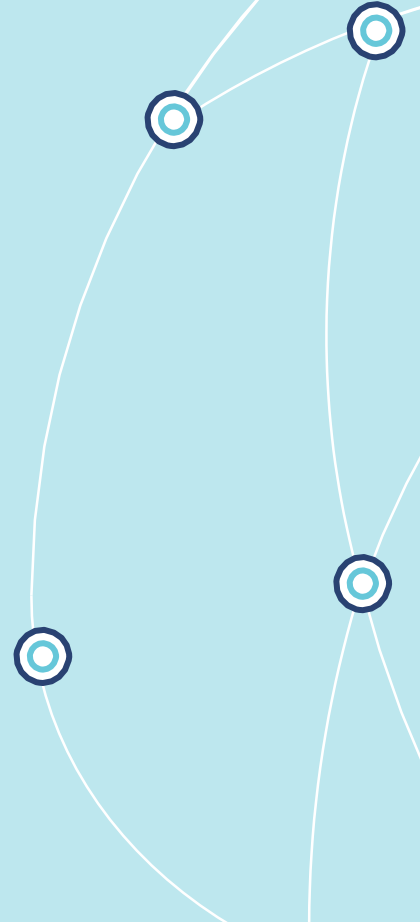


Canada's Insurance Connection

How Can Interior Designers Manage the Risks of COVID-19?

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Today's Agenda

1. Professional Practice During a Pandemic
2. Professional Liability Risks
3. Commercial Risks
4. Privacy Risks
5. Claims Management
6. About PROLINK



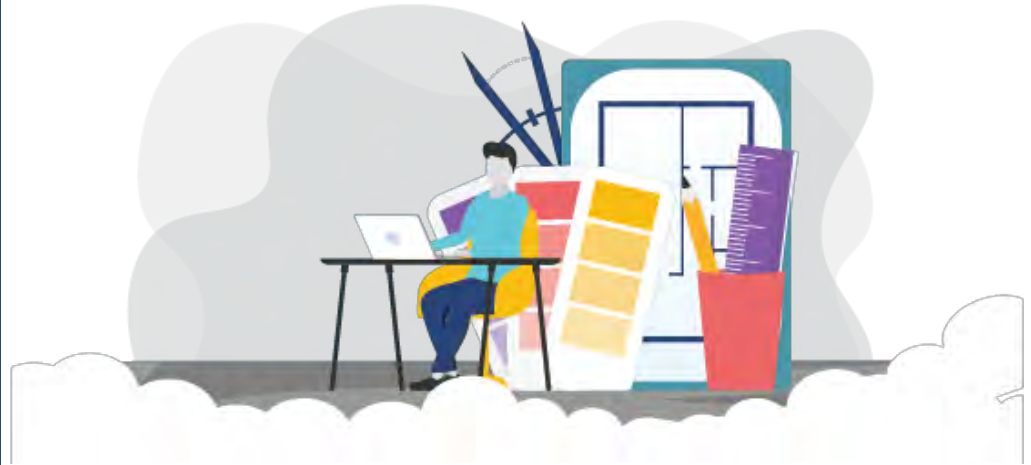
Professional Practice During the Pandemic

How are Interior Designers
affected?

Interior Designers are used to being adaptable...

...but the **rapidly evolving nature of COVID-19** might be moving faster than you can keep up.

Whether it's a residential or commercial project, the impact of the coronavirus—physical distancing, infection control, remote work—has **exacerbated the existing risks of professional practice.**



- Our presentation will review the expanded **professional, commercial, and privacy risks** you face as an Interior Designer and the best practices to mitigate them.

Please note: The information provided herein is presented from a liability-based perspective to avoid insurance claims. It is meant to supplement your existing research and is not exhaustive or a substitute for legal advice.



Professional Liability Risks

How does COVID-19 complicate
the existing risks of practice?

Project Management: The Risks

Approach

Broad approaches to crisis response that don't account for industry or project-specific risks might render performance **impossible**, substantially more **difficult**, or **expensive**.

e.g. you might need to consider different PPE requirements or physical distancing for each worksite

Contracts

Clients may add clauses and/or waivers into contracts to address **new COVID-19 risks** for forthcoming projects.

e.g. virus transmission, performance disruptions, changes in layouts or plans, etc.

Timelines

Business interruptions caused by COVID-19 might lead to supply chain delays, **elongated timelines**, or inability to meet deliverables at all.

e.g. shutdown construction sites, safety adjustments, pricing structure due to higher material costs

Role

You face greater risk by **taking responsibility** for: installation, manufacturing, fabrication; hiring subcontractors; and sourcing and buying furnishings for your client.

If any of those services is impacted by COVID-19, you could be liable.



CASE STUDY

Could you be held liable for a COVID-19 infection?

- You create new workplace designs in accordance with **existing** government and public health standards.
- However, one of your client's employees contracts COVID-19 and the business is required to **temporarily shut down**.
- Your client claims that you are **responsible** for the business's closure because you should've designed a workspace that "eliminated" the risk of transmission.

Risk Management Tips:

- Maintain **both** Professional Liability and CGL Insurance. Why? The claim could fall under either policy because it relates to both illness and a client's financial loss.
- Include a **COVID-19 waiver/disclaimer** in client contracts to reduce your liability. Note: ARIDO's Practice Advisory Committee is working on a disclaimer template for members.

Best Practices: Preliminary Steps



- Be knowledgeable about **legislative, regulatory, and policy issues** that impact the design and construction of critical infrastructure at both **provincial and municipal** levels. Keep current with public health.
- Be aware of any **sector-specific requirements** for the industries you serve (i.e., hospitality).
- Seek **legal counsel** to determine whether or not a specific project or type of work can proceed depending on the stage of the crisis.
- Have a lawyer **review your contracts** for existing and upcoming projects—for clients and subcontractors—and amend as needed.
- **DO NOT auto-renew** contracts without legal review.
- **DO NOT** act as your own lawyer **under any circumstance**.

Best Practices: Contracts

- **Tailor your contracts** to address the scale and scope of each project, industry, and client.
- Explicitly define **current or anticipated effects** on:
 - Terms and conditions, including services to be provided;
 - Price escalations, payments, and invoicing schedules;
 - The timing, delivery, and termination of services;
 - What constitutes an “excusable delay,” parameters for notice of the delay, and how long the delay will be;
 - All applicable safety procedures and how they are compliant with regulatory, provincial, and professional requirements;
 - Response protocols for positive cases or if your project is halted, shut down, or suspended in the future.
- **A paper form is not a substitute for a full discussion.** Make sure all involved parties have a **full understanding** of your contract and sufficient opportunity to ask questions.
- Ensure contracts are **signed and dated** by all relevant parties.



Documentation

- Maintain a **complete record** of all provided services, actions, and interactions, including online correspondence. Inform clients that you will do so.
- Include: the **time and date**, all discussed **topics** and **next steps**, any recommendations you made and why, and the client's refusal if applicable.
- Ensure that all documentation is **objective**—avoid personal opinions.
- **Verify** all details before placing large orders with suppliers.

Communication

- **Keep all relevant parties informed** of all changes to:
 - Design plans and layouts;
 - Pricing and deadlines;
 - Government and safety protocols.
- Do not assume understanding by the client or subcontractor. Always **follow up in writing** on any key information and decisions. (e.g. summary emails are valuable)
- Remember: client expectations will be high if you take on the role of **project manager**.

Best Practices: Construction Sites

Interior Designers may have to visit construction sites to perform preparation tasks, such as **assessments and inspections**, and take **measurements**. Be sure to:

- **Increase inspection** of worksites and enforce safety protocols to protect the health and wellness of all involved.
- Develop **individual crisis response policies** for each specific worksite.
- Regularly consult city websites for each project for updates on **municipal orders or changes** to project-related activities (e.g. permits, inspections).
- For client visits, use a **disclaimer form or waiver** in which the client acknowledges the risk of contracting COVID-19 from the worksite.



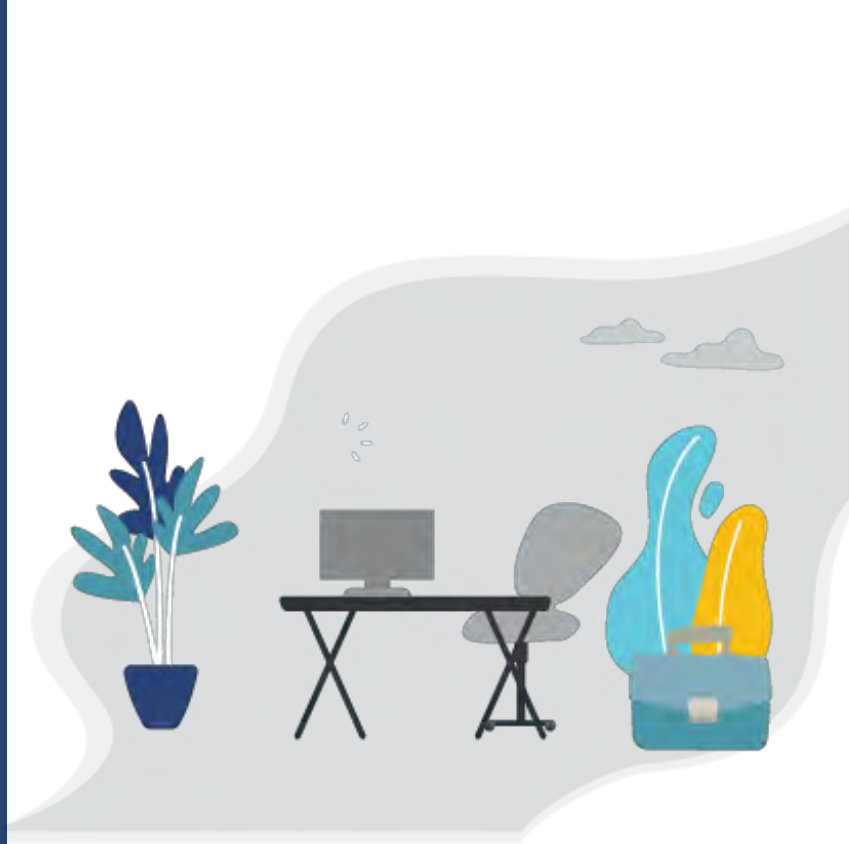
CASE STUDY

Even a small mishap can have devastating consequences.

- Based on available information from your supplier, you recommend a particular **antimicrobial material** to reduce the risk of surface transmission in a client's office.
- However, you later learn that the material you chose is in fact **not capable of mitigating the spread of COVID-19**.
- Your client issues a letter demanding that you **replace the desks and workspace materials** since you recommended the products.

Risk Management Tips:

- Ensure **documentation** from your suppliers to support your recommendations to clients.
- Have your client enter into the supplier contract **directly**. This ensures that the supplier will also have to respond to the claim.



CASE STUDY

A COVID-19 Catch-22: Are building codes affected?



- While designing a new restaurant layout, you are forced to compromise **building code regulations** to mitigate the spread of COVID-19.
- Upon inspection, the city building inspector requires the client to alter the restaurant's layout in order to **meet accessibility laws**.
- Your client demands that you **re-design the restaurant** at no extra cost and cover construction expenses and all loss of revenue during closure.

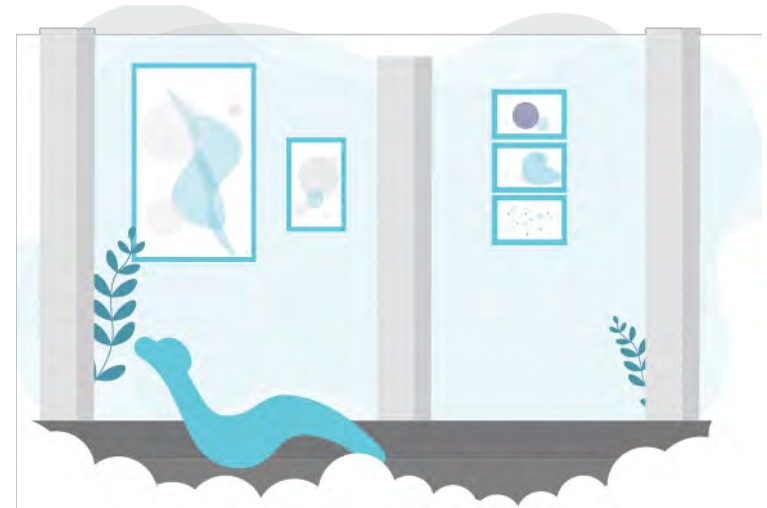
Risk Management Tips:

- **Communicate** the code deviation with the municipal building code officer and **document** all received approvals.
- In your client contract, **specify** that you are not responsible for any future costs related to building code requirements.

Design Services: The Risks

Clients are looking to Interior Designers for guidance on how to balance **functionality and aesthetics with health and safety**.

- **Space Planning:** Reimagined layouts and redesigned interiors that integrate distancing and infection control. (e.g. larger rooms, wider hallways, larger workspaces).
- **Materials:** Non-porous, germ-resistant materials that are easy to clean and sanitize for furniture, fixtures, flooring, and any high-touch surfaces.
- **Interior Changes:** Hygienic and sanitary equipment that require specialized design.
 - e.g. air purifiers and filtration systems, auto-cleaning technologies, handwashing stations and sinks, antimicrobial coatings, ultraviolet lamps, etc.



Design Services: The Risks

These demands could lead to:

- **Pricing Changes:** Incorporating safer design changes might make it difficult to work within the client's budget or timeframe if there's a shortage in high-demand materials.
- **Poor Advice:** You could be found negligent for failing to select safe materials if you're not up-to-date on the latest policies and safety legislations for the jurisdictions and sectors you serve.
- **Compliance Violations:** Designers must integrate safety measures with existing regulatory and legal requirements, like accessibility standards. Failure to do so could lead to allegations of noncompliance.
 - e.g. Flat, smooth flooring (linoleum, vinyl) is easier to clean, but might be too slippery when wet. Tiles with grains that add traction might be more slip-resistant, but harder to clean.



Best Practices: Be Proactive

- Coordinate with tradespeople for **technical expertise** where appropriate.
 - e.g. mechanical, electrical, and plumbing
- Seek out **reliable and accurate information before recommending** any products. Document your **rationale** for doing so and any sources you relied upon.
- **Avoid trendy furniture solutions** that include soft, absorptive surfaces, especially in high-touch areas or areas with limited space.
 - e.g. Opting for laminate or vinyl in office cubicles instead of fabric panels which are likelier to collect particles.
- **Source locally or domestically** where possible to reduce the risk of manufacturing, distribution, or shipping disruptions.
- COVID-19 is a fast-moving issue. **Be flexible** and be prepared to frequently review and update your advice, policies, and deliverables as the circumstances change.



Subcontractors: The Risks

The responsibility for **all provided services** remains with you even if you've outsourced work to a subcontracted consultant or contractor.

e.g. demolition, construction, design, installation



Chief risks to the management of subcontractors include:

- **Health and safety concerns;**
- **Labour or work disruptions**, which may impact the project schedule, quality of production, and efficiency;
- Potential **contractor insolvencies** due to COVID-19's economic disruption.
 - e.g. You could be sued for errors made by a general contractor if they go out of business between the time the project is completed and when the lawsuit is filed. Lawyers will name everyone involved in a project.

Best Practices: Mitigate your subtrade exposure

DO NOT:

- Assume the **liability of subcontractors** in client contracts.
- Add subcontractors as “additional insureds” to your insurance policy; **your coverage will not apply.**
- Hire subcontractors **without** their own CGL insurance.

DO:

- Include **indemnification / hold harmless clauses** in contracts with subcontractors and suppliers.
- Obtain **certificates of CGL insurance** from all subcontractors **annually**. You should be added as an “additional insured” in advance of a project.
- Conduct a **risk assessment** of your subcontractor base, accounting for credit quality, supply chain resilience, and geography and jurisdictional conditions.
- Monitor the **financial condition** of your current subcontractor base on an ongoing basis. Be sure to assess COVID-19’s impact on their other projects.
- **Documentation is critical.** Record all schedule changes, keep track of project logs, and note any issues your clients may have with subcontractors.
- **Communicate** with your subcontractors openly and honestly to understand the challenges they face and deploy effective risk management strategies.



The Best Practice: Professional Liability Insurance

- Defends you (and your business) from allegations of **errors, omissions, or negligence** committed within your scope of practice as a Registered Interior Designer;
- Protects you **EVEN IF** the claims made against you are frivolous;
- Automatically covers you for **online e-design services and virtual consultations**, as long as the lawsuit is brought against you in Canada or the USA;
- Covers your **financial damages**, including: legal fees incurred, administrative costs, court settlements, witnesses and damages awarded to third parties;
- Provides you with an **experienced defense lawyer**; and
- Automatically covers **employees**.



What's Covered?

- Breach of professional duty;
- Failure to render services;
- Poor advice;
- Omission claims (client “said”, you “said”);
- Misrepresentation and miscommunication;
- Financial loss to clients because of any errors or omissions committed by you or your employees;
- Frivolous allegations against you.

What's Not?

- Intentionally wrongful, fraudulent, or illegal acts;
- Bodily injury (covered by CGL);
- Property damage (covered by CGL);
- Workers' rights or employment issues;
 - e.g. discrimination, harassment, wrongful termination
- Claims that arise following the cancellation or non-renewal of the policy;
- Breaching client contract obligations.

Professional Liability Insurance: Why do you need it?

The bottom line? Any professional or business that provides advice or service to clients for a fee, even if on a part-time basis, is at risk of legal action and should consider Professional Liability Insurance.



- Clients are **unpredictable**. You can be sued just because a client is dissatisfied.
- Even if you're not guilty, you **still** have to defend. And lawsuits are **costly**. (avg. of \$13,000 simply to respond)
- **Everyone makes mistakes**—even experts.
- More employees means **more room for error**.
- Small businesses are **less likely** to recover.
- You can protect your **finances**, your **business**, and your **reputation**.
- All ARIDO Registered and Intern members are **required** to carry Professional Liability insurance.

To learn more, check out our online guides:

- [Professional Liability Insurance: What is it, What's Covered, and What's Not?](#)
- [8 Most Frequently Asked Questions About Professional Liability Insurance](#)

What if I stop practicing due to COVID-19?

Claims that arise after the policy's expiry will not be covered.

- Professional Liability Insurance is a **claims-made policy**.
 - The policy you have in place at the time an allegation is reported will respond, **NOT** the policy you had in place at the time you committed the alleged act.
- Keep in mind: **you can be served YEARS later**, long after the event giving rise to the claim has taken place.
 - If you don't have insurance **when the claim is reported**—if you cancel your policy for any reason—you **won't be covered** for any work prior to cancellation.

How can this be avoided? By continuing your policy with an **extended reporting period (ERP)**.

- An ERP keeps your policy in force for a specified period of time following cancellation or non-renewal.
- With a continuous Professional Liability policy in place, you'll be covered whenever a claim is reported, even **if you become inactive, go on leave, close your business, or retire.**
- **Good News:** all ARIDO members receive **FREE ERP** as long as Berkley underwrites the program.





ARIDO Exclusive Policy Features

- Up to \$25,000 for disciplinary action expenses;
- Unlimited legal expenses coverage;
- No deductible applied to legal defense costs incurred;
- Cross-border coverage for lawsuits in the USA;
- Free ERP for members that retire, go on leave, or cease practice;
- Coverage for Ontario Designers registered under Bill 124;
- Full retroactive coverage for previously insured members;
- Extended coverage for intellectual property infringement;
- And more!

*Higher limits of coverage are available for each member package.



Commercial Risks

How can you run your business in
a safe and responsible way?

Enhanced Commercial Risks



Employer Liability:

- Whether you work out of an office space, a design studio, or your home, employers across Canada **are obligated under various OH&S laws** to protect employees and clients' health and safety.
- Failure to comply with government orders can result in:
 - **Workplace investigations;**
 - **Fines and penalties;** and
 - **Criminal prosecutions,** if you knowingly allowed staff to work in unsafe conditions.

Property Damage:

- Budget-conscious clients might push you to **retrofit existing furniture** in accordance with safety protocols.
 - e.g. using storage cabinets or wardrobe lockers as dividers to maintain a 6ft distance
- But if any furniture or fixtures are damaged in the process, you could be **liable for damages.**

Best Practice: Running Your Business Safely and Responsibly

- As a Business Owner and an employer, you must adhere to **strict workplace hygiene and physical distancing standards** and provide **safety training** for all staff.
- **Until you can implement these safeguards, your physical offices or studios should remain closed.**
- **Keep in mind:** all policies and protocols will need constant adjustment as we navigate our way through this pandemic. Routinely review and revise as needed.

To learn more about reopening safely, please see our detailed online guides:

- [Business as Usual? The Employer's Guide for Returning to Work](#)
- [Coping with COVID-19: The Small Business Guide to Reopening, Relief, & Recovery](#)



The Best Practice: Commercial General Liability Insurance

- Protects you from third-party claims of bodily injury or property damage caused by your professional activities or employee operations, including:
 - Sickness or disease;
 - Advertising injury, libel, and slander;
 - Defective products and related claims.
- Applies in scenarios that may not be covered by WSIB claims;
 - e.g. if an employee accidentally injures another employee
- Includes coverage options for:
 - Client-awarded damages, legal fees, and medical payments for injured parties;
 - Your Legal Liability as a commercial tenant;
 - Liability to injured employees;
 - Voluntary Compensation due to an injury sustained;
 - Non-Owned Automobile Coverage (when a business does not own the vehicle involved in an accident);
- Extends coverage to products liability.
 - You assume more risk if you order or design products on behalf of your clients.



Commercial General Liability Insurance: Why do you need it?



CGL is crucial if you:

- **Own, rent, or lease** a commercial space;
- Work from home or have a **home-based business**;
 - Professional Liability and homeowner's policies won't cover a client's slip-and-fall on your premises.
- Have a **commercial vehicle** or your personal car for business needs, like visiting clients or suppliers;
 - Commercial vehicles aren't usually covered under your personal auto insurance.
- **Visit clients** at company offices, commercial worksites or their homes;
 - What if your client is injured while completing a site visit with you at a location under construction?

Commercial General Liability will shield you from the financial burden of incidents that may be **outside of your control**.

What's the difference?

Professional Liability Insurance:

- Covers **any actual or alleged mistakes** you might make within the scope of practice for a Registered Interior Designer.

Commercial General Liability Insurance:

- Covers allegations **that may not be directly related to your professional services**, but occur as a result of your business operations.

Do I really need both?

- Because both policies address different risks, **they work together** to protect you **comprehensively** from gaps in coverage or any claims that fall into a **grey area** related to bodily injury or property damage.
- It is critical to have both policies provided by the **same insurer** for a much simpler and more efficient claims process.





Privacy Risks

Your physical assets aren't always
your most valuable.

The Rising Threat of a Privacy Breach



On average, a data breach costs Canadian businesses \$6.35 million CAD.



88% of Canadian businesses reported experiencing a cyberattack in 2019.



Small businesses are just as vulnerable—43% of cyberattacks target SMEs.

Cyberattacks are growing in frequency, intensity, and severity across the world.

Everyone is
at risk.

New Rules = New Risks for Canadian Firms

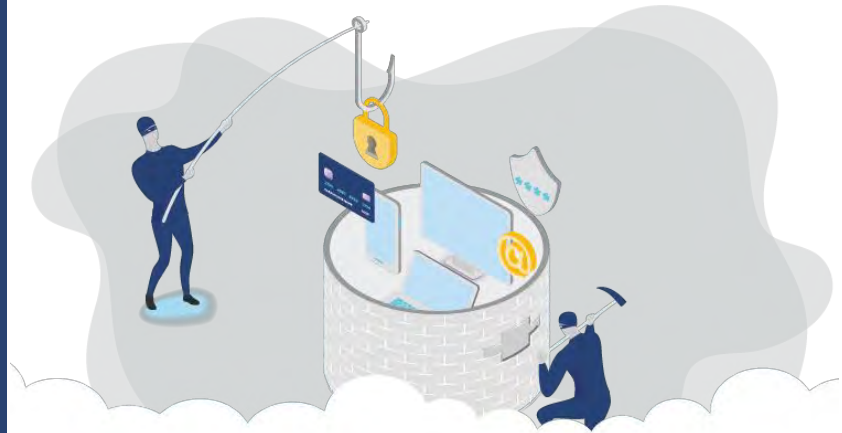
Under the **PIPEDA Digital Privacy Act**, when a breach poses a risk of significant harm you must notify:

- Affected individuals;
- The Privacy Commissioner of Canada.

As of November 1st, 2018:

- You must keep a record of all breaches even if there is no risk of significant harm for a minimum of **24 months** AND
- The Privacy Commissioner may ask you to provide your records **at any time** or you may be called into legal proceedings.

If organizations fail to safeguard, retain, or dispose of personal information in their custody or fail to report a breach, they risk **severe penalties for compliance violations**.



The Impact of COVID-19

Cybercriminals across the world are exploiting global fears to prey on **worried populations, disrupted workers, and struggling businesses.**



- According to IBM's 2020 Cost of a Data Breach Study, having a remote workforce increased the average global cost of a data breach by nearly \$137,000 for a total cost of **\$4 million**.
- Opportunist hackers can now access **sensitive data** through unsafe home Wi-Fi networks, unprotected devices, and corporate data centres strained by the surge of traffic.

Why are Interior Designers vulnerable?



Confidential Data

Access to sensitive personal and financial employee and client data, as well as your design portfolio, which may violate the terms of a client contract or NDA.



Network Connections

Third-party connections open up opportunities for cybercriminals to target both wealthier individuals and other businesses who may not be well-equipped to protect themselves.



Remote Work

Interior Designers are generally likelier to work from home, where hackers can take advantage of weak cybersecurity. E-services and various online platforms can also can widen your exposure.

The Fallout of a Privacy Breach under PIPEDA

- **The bad news?** If you're found negligent in a data breach, you could be liable for up to **\$100,000 in fines** under PIPEDA.
- **The really bad news?** There's also all the additional costs of a data breach like:
 - Investigation, legal, and consulting fees;
 - Client notification costs and credit monitoring fees;
 - Business interruption costs (e.g. no network access).
- **The really, really bad news?** The loss of client trust and damage to your reputation could be **irreparable**.
 - Only **19%** of Canadians said they would still do business with an organization if their data was exposed in a cyber-attack.



Best Practices: Cybersecurity



- Beware of **phishing** and email fraud.
- Implement **security safeguards** for all networks, systems, and devices.
 - e.g. firewalls, complicated passwords, software, whitelisting, and dual authentication.
- **Encrypt** all personal devices used for work.
 - For more detailed instructions, click [here](#).
- **Communicate and train** all employees on software, cybersecurity threats, and how to report any problems.
- Review your privacy breach **incident response plan**.

To learn more about cybersecurity, see our online guides:

- [COVID-19: How to Keep Employees Cyber-Safe While Working From Home](#)
- [Coping with COVID-19: The Small Business Guide to Reopening, Relief, & Recovery](#)
- [“Everyone gets hacked at some point. I’ll be fine.”: Data Breaches and Designers](#)



The Best Practice: Cyber Liability Insurance

No matter how careful you are, sometimes a privacy breach is **unavoidable**. But it's not **unmanageable**.

Your ARIDO Professional Liability insurance automatically includes:

- \$250,000 for Privacy Breach expenses at no additional cost;
- Funds for privacy administration expenses, notifying the privacy commissioner, data forensics, PR, and marketing services;
- Loss of Documents coverage.

A standalone Cyber Insurance policy can get you access to:

- Access to experienced defence lawyers and a legal privacy breach coach;
- A forensic investigations team to determine the problem and how to fix the breach;
- Funds to set up credit monitoring and notification;
- And more!

Watch our [video](#) to learn more.



Claims Management

How to avoid going from bad to worse in a crisis.

When is it a claim?

When in doubt, report an incident or circumstance to PROLINK.

Delayed reporting or failure to report can result in denial of coverage.



Treat it as a claim if you:

- Receive a **statement of claim or notice** from the plaintiff's lawyer;
- Receive **threatening verbal or written comments** from another party regarding a lawsuit;
- **Made an error** that may reasonably give rise to a future claim.

What should I do in the event of a claim?

- Only state objective facts to the claimant;
- Notify PROLINK immediately;
- Pull together and secure all relevant documentation on the file.

Why report quickly? The sooner you report, the sooner you can:

- Minimize the potential loss;
- Minimize adverse publicity;
- Resolve the situation.

To learn more about the claims process, see our guide:

- [How to File an Insurance Claim in 5 Steps \(or Less\)](#)



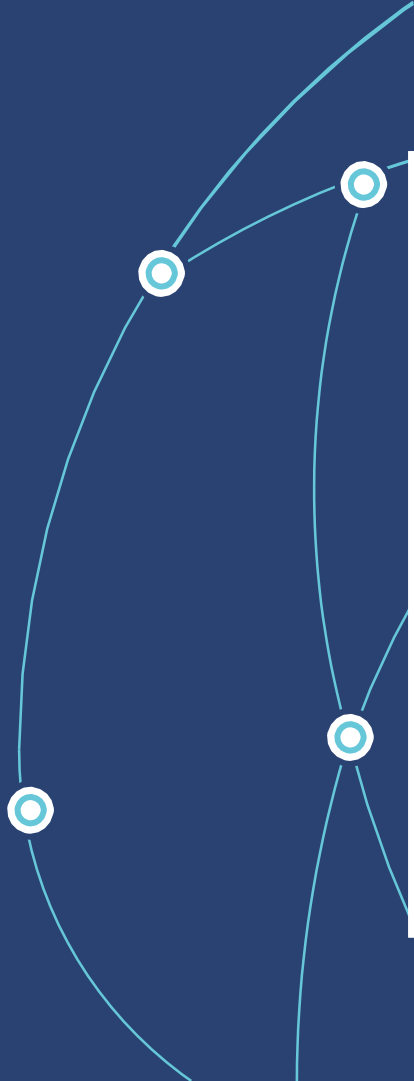
What should I NOT do in the event of a claim?



Do not:

- **Admit liability or fault** to the claimant;
- Make any **written or verbal statements** to any involved or third parties;
- Attempt to **negotiate, compensate** the claimant, or independently **settle**;
- **Amend or change** any previous documents or records;
- Seek your own **legal counsel** before notifying your Insurer—your legal fees may not be reimbursed if you do.
- **Delay** reporting to PROLINK.

Taking such actions **could interfere with your insurer's ability to manage the claim** and jeopardize your access to insurance coverage and/or legal defence.



About PROLINK

Canada's Insurance Connection.

Who is PROLINK?

We can connect you to the right coverage, from the right insurance company, at the right price.



- We're a national, independent, insurance brokerage.
- We offer tailor-made insurance solutions.
- We've been serving ARIDO's Registered Interior Designers for nearly a decade.

Our advantage?

- We have the network, market power, and influence to negotiate unparalleled savings for your unique needs.
- With access to over 30 insurers and over 35 years of experience, we've seen insurance from every angle.
- We'll leverage our relationships and reputation to be a valuable advocate for you in claims situations.

Questions?

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