



January 22, 1980

TREASURY BOARD DIRECTIVE

TO ALL MINISTERS  
DEPUTY MINISTERS  
MINISTRY COMPTROLLERS  
MINISTRY PERSONNEL DIRECTORS


DIRECTIVE NO. 5/80  
SUBJECT: Contracts and Commitments

A recent British Columbia Supreme Court decision is of importance to managers within Government: It was decided that the Crown can be bound by a contract, oral or written, made by agents or servants of the Crown acting within the scope of their apparent authority, and regardless of their actual authority. Conceivably, this would cover matters such as contracts for service, purchases of goods, or hiring of equipment.

Since there are often various internal procedures and approvals required prior to concluding a government contract, it is important for those employees involved in contract negotiations to clearly determine the boundaries of their authority prior to any commitments being made. A public servant who appears to have the authority to bind the Crown to a contract, but who in fact does not actually have that authority, may still bind the Crown because the Courts will not allow the Crown to later assert a limitation on the authority of the servant unknown to the other party when the contract was made, in order to avoid contractual responsibility. In this context "contract" means a legally binding agreement.

Any confusion or lack of clear understanding of the boundaries of an employee's authority should be removed by requesting further instructions from a superior, or seeking advice from an appropriate source (e.g. Personnel Officers, Ministry Comptrollers, Ministry Solicitors, etc.).

Those managers who, as part of their responsibilities, are required to negotiate and enter into contracts on behalf of the Crown should be clearly advised of the extent of their authority.

  
Hugh A. Curtis,  
CHAIRMAN.