

AT RISK

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*A Risk Management Newsletter for the British Columbia
Provincial Government, its Ministries and Organizations*

In this Issue:

- ❖ Executive Director's Message
- ❖ Insurance in Government Contracts
- ❖ Risk Management: It's Like Hot Sauce
- ❖ Government Appointees Indemnity Program
- ❖ Ask Risk
- ❖ Steps to Take When a Loss Occurs
- ❖ Ongoing Risk Management Education
- ❖ Conferences to Note
- ❖ About our Organization

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Executive Director's Message

I'm pleased to present this issue of *At Risk*.

This edition brings home the diversity of our operations at Risk Management Branch and illustrates the broad scope that defines what "risk management" encompasses.

From advising on appropriate types and amounts of insurance to require of our service providers, to managing programs that protect individuals from personal loss, to supporting ministries who have suffered a security breach—these are just a small sampling of our daily work.

What risk management means to you in the context of your work will depend on your own operations, but it likely involves a combination of things. Your regulatory framework, workplace safety procedures,

government policy, the terms of your employment, and your own common sense provide the backdrop for more formal risk management efforts.

And how much formal risk management do you need? According to this issue of *At Risk* how much is determined by what's cooking. As broad as risk management can be, it can also be focussed and narrow if the circumstances call for it. As we say around here, "It depends."

Staff at Risk Management Branch are always available to provide assistance on whatever risk management means to you and we welcome your enquiries. <

Phil Grewar, Executive Director

Insurance in Government Contracts

Government contracts almost always require that contractors have Commercial General Liability (CGL) insurance—but why do we require it and what does it cover?

The provincial government acknowledges the responsibility for any legal liabilities which might arise if someone is injured or suffers property damage as a result of government actions or the acts or omissions of government employees. The Province doesn't, however, accept responsibility for damages which result from the acts or omissions of its contractors.

Contractors have control over how they perform their contracts and should bear the responsibility for any injury or damage their activities cause. Injured third parties, though, will often sue the Province as well as the contractor, despite the fact that there may be no fault on the government's part.

Even when the Province is ultimately found not liable, we might incur legal costs defending against the action.

To protect the Province, contract boilerplates include an indemnity clause. This is a clause by which the contractor agrees to indemnify and hold harmless the Province for any injury or property damage the contractor causes while performing the contract. But this clause, by itself, is not enough. What if the contractor is unable to pay for its legal liabilities? And what about those legal fees the Province might incur?

To ensure there are financial resources to back up the indemnity clause, government contracts require contractors to carry CGL insurance at their own expense.

(continued on page 2)

Insurance in Government Contracts (continued)

A CGL policy protects the insured (the contractor) against losses which it may incur as a result of bodily injury, property damage, or personal injury (e.g. libel, slander, false arrest) it causes to third parties. The policy also provides a legal defense and pays related defense costs.

A third party is anybody not a party to the insurance contract (the policy), who alleges they have suffered damage or injury because of an action, or lack of action, on the part of the insured (the contractor). A CGL insurer is responsible only for costs which its insured is legally obligated to pay.

The contract also requires that the contractor (the "named insured" under the policy) add the Province to its policy as an "additional insured" and that the policy include a cross liability clause. The term "additional Insured" refers to insureds who are not automatically covered by the policy, but to whom the insurer extends coverage for a specific activity performed by the named insured.

The cross liability clause permits the insurer to act, in the event of a claim, as though it had issued a separate insurance policy to each insured (the named insured and the additional insured). Any breach of a condition of the policy by one insured would not affect the protection given to the other.

How much CGL should you require? The best answer is "it depends" on the context, specifically the risk of bodily injury and property damage that could arise from the services. The usual minimum amount is \$2 million inclusive per occurrence. The context will also determine whether other types of insurance covering risks excluded from a CGL policy should be required.

Contractors must show evidence that their CGL insurance fulfills the requirements set out in the contract. Short of obtaining and reviewing certified copies of the actual insurance policies (which most government staff are not qualified or expected to do), the "BC Certificate of Insurance" is the only acceptable proof of compliance with contract insurance requirements and is a Core Policy requirement. Other certificates do not contain all the information we require. Our form

displays contractor's insurance information in a consistent format, easily used by a ministry in judging whether or not the insurance meets their requirements.

You should obtain and review BC Certificates of Insurance at the start of a contract term, whenever the agreement is amended to require additional insurance, and within 10 business days of the policy expiry date as set out on the previous certificate. Note that the expiry date of an insurance policy will usually be different from the anniversary date of the contract. An insurer is not required to advise you that an insurance policy has expired.

When you receive the completed certificate you should review it for the following:

- Is the **named insured** on the certificate the same as the name on the agreement?
- Are **all** the **types of insurance** the same as requested in the agreement?
- Are the **limits** at least as high as the insurance requirements in the contract?
- Are **expiry dates** and **policy numbers** shown?
- Has the certificate been signed by the **agent or broker**?
- Is the **insurer(s)** acceptable?

To confirm that insurers are licensed to do business in Canada check the Financial Institutions Commission website at <http://www.fic.gov.bc.ca/responsibilities/insurance/authorizedinsurancecompanies.asp> or the Office of the Superintendent of Financial Institutions website at http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=552.

In summary, government contracts require contractors to carry Commercial General Liability insurance, to add the Province as an additional insured, and to show proof of insurance. Insurance supports their ability to make good on the indemnity clause. The status of "additional insured" secures the Province's right to a defense under the policy and coverage for claims arising from the acts or omissions of the contractor. Obtaining and understanding BC Certificates of Insurance is your proof that these requirements have been met. <



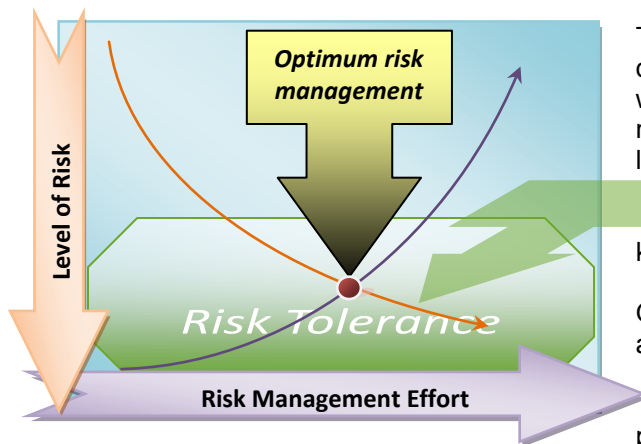
Risk Management: it's Like Hot Sauce

In some ways, risk management is like hot sauce. Some situations lend themselves to a fair amount of it, while others can be spoiled by too much. Public-Private Partnerships, for example, are about effectively transferring risk to the private partner and retaining risk where it's cost effective to do so, all while maximizing public benefits. They are the Texas Chili of risk management work, and benefit from a generous dollop of time and effort to attain the desired allocation of risk at the best price. Other situations, like every day operational decisions, are more like savoury omelettes – they benefit from just a dash of common sense; too much effort managing risk would be over-kill.

Risk management involves minimizing negative impacts while maximizing opportunities. Failing to effectively manage risk can cost money, time, effort, lives, and loss of reputation. On the other hand, many of us can recall times when mitigation measures (like multiple levels of approval for minor expense claims) seem to cost more in time and effort than the risks they were trying to prevent: too much hot sauce! Applying the right amount of hot sauce according to the type of dish being prepared is just like an effective risk management program.

No risk can be completely eliminated without avoiding it altogether – not a viable scenario for many government operations. Risk can be reduced by implementing strategies to reduce either the likelihood the risk will manifest or the impacts if it occurs, but each of these controls can take money, time, and work to implement and monitor.

Effective risk management is achieved when the controls put in place are commensurate with the benefit attained. Implement appropriate mitigation strategies to reduce the risks, without imposing an excessive burden that ends up costing more than expected savings or even creating new risks. You don't want to encourage non-compliance and workarounds.



The diagram demonstrates that the more resources you devote to mitigating a risk, the lower the risk will be. There will come a point, however, where spending resources to manage risks costs more in time, effort and money than the loss that would occur from the risk itself. You wouldn't spend \$5,000 on a security system for a car that was only worth half that amount, would you? But how do you know for sure how much is too much?

Our risk tolerance – the extent to which we are willing to accept the risk of loss – is the taste test for how much risk management we need. We expect a few small losses here and there no matter what we do so we rely on normal best practices to mitigate the bulk of that risk without taking extraordinary measures. Our risk tolerance for low impact

risk tends to be relatively high. On the other hand, our risk tolerance tends to be much lower when it comes to things like preserving human health so we generally call for lots of hot sauce. For example, we tend to be more comfortable (and public expectation tends to demand) devoting resources to prevent playground injuries, stop the spread of disease, protect our food from contamination, and implement safety protocols in the workplace.

How much of what type of risk can your organization stomach in pursuit of its goals and objectives? How much are you willing to devote to reducing those risks? How much hot sauce? A formal risk management process helps you determine what your real risks are, and can help you formulate appropriate, cost-effective measures to mitigate them. Understanding your risk tolerance helps you decide if your recipe calls for a few drops of hot sauce, or if it needs the whole bottle. <

Government Appointees Indemnity Program

The Government Appointees Indemnity Program provides legal and financial protection to individuals appointed by government (either by a minister or the Lieutenant Government in Council) to any agency, board or commission within the government entity, or in the non-government sector.

This program provides liability protection for individuals appointed to these organizations on behalf of government. Coverage is subject to the terms of the indemnity, and in excess of any insurance the organization may carry.

The indemnity is granted by way of a standard government form ([FIN 170](#)), **Government Appointees to Agencies, Boards and Commissions Indemnity**. This form was previously called Government Agencies, Boards and Commissions Appointee Indemnity—we've recently updated the title of the form but the wording of the indemnity has not changed.

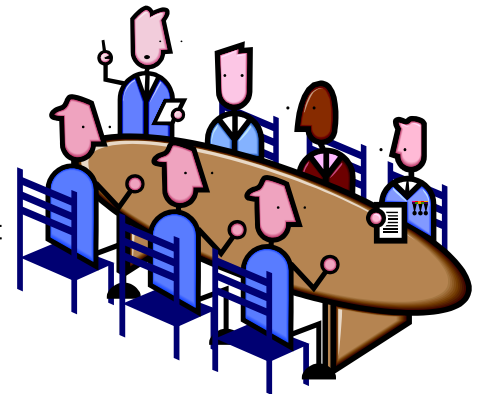
The form should be completed by both the appointing office and the appointee and retained on file at the ministry. To ensure consistency of coverage, the form may not be modified in any way.

Please note, however, that not every appointee needs the Appointees Indemnity Program.

For example, the form is not necessary for an appointment to any government corporation. Examples of government corporations are BC Hydro and Power Authority, Thompson Rivers University, Fraser Health Authority, and BC Assessment. These types of appointees are covered automatically under one of the other programs created specifically for government corporations, such as the Director's Indemnity Protection Program.

Similarly, Deputy Ministers and other government employees appointed to represent government as in keeping with their job duties do not need the Appointees Indemnity either. All government employees have an indemnity included either in their collective agreement or the terms and conditions of their employment.

Government staff may visit the Appointees Indemnity intranet for more information: <http://www.fin.gov.bc.ca/PT/rmb/aip.stm> <



Ask Risk

Is the Province insured? What is self-insurance and what does it cover?

We get this question when another party to a contract is looking for evidence of the province's insurance. We're also asked when the province is undertaking an in-house event (such as a recognition celebration) that is outside normal operations—suddenly staff are curious about whether we are “insured for that”. In a nutshell, with a few exceptions, the province doesn't buy commercial insurance for its own property or liability, but instead funds losses as they arise—we self-insure. Exceptions include the minimum automobile liability insurance required by law for the province's vehicle fleet and the Province's owner-controlled construction program.

There is no pot of money set aside to pay for losses. The source of funds depends on the type and size of the loss, and can include ministry budgets (for example, for smaller property losses), the *Crown Proceeding Act* (where we are sued for losses we've caused to a third party), and the federal Disaster Financial Assistance program (catastrophic losses).

Paying for losses as they arise has proven to be a more cost-effective method than paying large premiums to an insurance company. But whereas there is no insurance policy, it doesn't mean there isn't a plan and method of funding losses. <



Steps to Take When a Loss Occurs

Someday a windstorm could come up and pull the roof off the building while you are at work. Or you could arrive at your workplace and find that the premises have been burglarized or vandalized or that a fire has left your office a wet, charred mess. You'd be experiencing property loss.

Alternatively, a visitor could fall down your stairs and be badly injured. Or someone could walk into a glass door that fractures and gives them a nasty cut. You'd have a bodily injury loss on your hands.



People often don't know how to react to these types of experiences. "What do we do now?" they ask.

First, notify the police or fire department if they aren't already involved. People think there is no chance of the police catching the criminals, so why bother? Always notify the police, both for the chance of recovery and for case continuity.

When faced with a loss, people often think that they should do nothing until the authorities arrive. This is true only to the extent that they should preserve evidence for any subsequent investigation. It does not mean that they should stand idly by and let the situation worsen. When you find yourself in a loss situation, you have a duty to take action to prevent further loss or to limit the loss that has occurred.

In a property loss take action to prevent further loss. It might be necessary to spend money without your usual authority, but don't spend more than the value of the property you are trying to save! Most importantly, safety comes first—don't put your safety, or that of anyone else, in jeopardy to protect assets.

If you can save your files, furniture, computers or other property by doing something, do it. Mitigating a loss could mean hiring contractors to remove important documents from the premises in order to preserve them. Or it might mean buying tarps and draping them over things. After a theft, make sure broken windows or doors

are secured. You may need to hire a security firm, in the event a major loss, to keep scavengers out.

Immediately following a loss there is a unique opportunity to capture evidence—take photographs of the cause of the loss, or something that will help to prove the value of the loss later. In many cases, it is important to retain physical evidence from or at the scene of the loss. If you put evidence aside right away, you can often avoid the expense and difficulty of establishing facts later. Think about what has just happened and what questions people might ask.

Use common sense. For example, if a person was injured by a piece of equipment, retain that piece of equipment. If it looks as though the fire started in the machinery room, make sure the room is not disturbed until investigators can view it. It is always better to save something unnecessarily than to let valuable evidence disappear.

With any event of significance you will be asked questions, sometimes much later. When an incident happens start a file right away and include business cards, witness names, incident reports and other pertinent details into it so they won't be misplaced.

To help you remember details, make notes. Write down everything as though you were telling a friend the story about what happened at work. Include all the essential facts: who, what, when, where, and why. Keep the notes in your file. These early recorded details will be accurate and later it will be easier to relate the facts to insurance adjusters, investigators or your boss.

Record the names of witnesses and other key people. This is particularly true for bodily injury when it may not be easy to capture or retain the physical evidence. Icy sidewalks, for instance, are temporary and can only be verified by the testimony of witnesses.

Core Policy and Procedure Manual (CPPM) [Chapter 20](#) and [Procedure L](#) set out the government requirements for responding to losses and outlines how Risk Management Branch can assist in the management of these losses when they occur. <

Ongoing Risk Management Education

- ❖ **British Columbia Risk & Insurance Management Association (BCRIMA)**
BCRIMA provides education primarily through monthly luncheon speakers and a spring Professional Development Day session. Educational opportunities are posted on the BCRIMA website as they become available:
<http://britishcolumbia.rims.org/RIMS/BritishColumbiaChapter/Home/>
- ❖ **Canadian Risk Management (CRM) Program**
The three CRM courses offered by Simon Fraser University are offered in January and September. Evening courses are scheduled at the downtown Vancouver campus, and in Victoria at Risk Management Branch.

For more info: <http://www.sfu.ca/cstudies/mppprog/rims.htm>

Management and Professional Programs, Continuing Studies
Simon Fraser University Vancouver 515 West Hastings Street Vancouver, BC
Tel: 778-782-5095 Fax: 604.291.5098 Email: mpp-info@sfu.ca

Conferences to Note

- ❖ **RIMS 2010 Western Regional Conference** September 14-17 Bend, Oregon
http://oregon.rims.org/RIMS/OregonChapter/Home/RIMS_2008_Conference_Scholarship/Default.aspx
- ❖ **2010 RIMS Canada Conference** September 26-29, Edmonton, Alberta
<http://oregon.rims.org/RIMS/OregonChapter/Home/Default.aspx>

About Our Organization . . .



Risk Management Branch is also the Government Security Office! The Executive Director is the government's senior security officer responsible for:

- overall planning, direction, monitoring and evaluation of government security management;
- developing, maintaining and co-ordinating the government security policy, operational standards, guidelines and procedures; and
- providing advice and assistance on security.

We advise and assist ministries in developing security strategies, security awareness, asset protection, and provide technical assistance with investigations related to breaches of security. Our scope of authority encompasses all types of security (physical, workplace, information, information technology, etc.). Our security specialists combine expertise in loss control, risk management, and security so are uniquely positioned to advise on all aspects of government security. <

To learn more about Risk Management Branch and Government Security Office visit our internet site: <http://www.fin.gov.bc.ca/PT/rmb/index.shtml> or give us a call.

Government staff may access our Intranet: <http://gww.fin.gov.bc.ca/PT/rmb/index.stm>

It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate.

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Comments, questions, requests for further information about the contents of this newsletter, or questions for possible inclusion in our ASK RISK column, can be directed to "At Risk Editor" via email at RMB@gov.bc.ca or faxed to (250) 356-6222.