

# AT RISK

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

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To receive future electronic editions of *At Risk* please e-mail [RMB@gov.bc.ca](mailto:RMB@gov.bc.ca) with "At Risk" in the subject line and include your e-mail address.

## Executive Director's Message

In this edition of *At Risk*, we review some of the key changes brought about by the *Insurance Amendment Act* and regulations that will come into force this summer. These are significant changes that have implications for our service providers and government corporations.

Ever wondered how to manage a colleague whose behaviour makes you worried about your safety? "Ask Risk" provides guidance about this sensitive subject.

The importance of context in conducting a risk assessment is explained using the example of the 2010 Olympic Winter Games. It's also a good reminder that a risk assessment is never truly completed, but is a living document that should be updated over time.

This edition also features an interesting piece by our colleagues at Legal Services Branch about holding contests. <

Phil Grewar, Executive Director

## "And the Winner is...": How to Launch a Successful Contest

*Authors: Wanda Kelley & Dorothy Wong  
Legal Services Branch*

Promotional contests have become a popular tool to promote government initiatives and programs. They can be highly effective in drawing the public's interest. However, you may not be aware that there are a number of legal requirements to meet before launching a contest. Indeed, the Supreme Court of Canada just confirmed an award of damages, including punitive damages, for an "Official Sweepstakes Notification" that was "riddled with misleading representations" and thus contrary to Quebec's consumer protection legislation: *Richard v. Time, Inc. and Time Consumer Marketing, Inc.*, 2012 SCC 8. <http://scc.lexum.org/en/2012/2012scc8/2012scc8.html>

What do you need to do before you issue that press release and announce your contest? Below, we describe some of the legal requirements, and we also provide a checklist for drafting the contest rules.

These are all things to consider in addition to contacting the Legal Services Branch at the Ministry of Justice for advice appropriate for your particular contest.

### The Law

The law pertaining to contests in Canada is found in a number of sources: the *Criminal Code of Canada*, the federal *Competition Act*, provincial and federal privacy legislation and, for contests open to residents of Quebec, the *Quebec Lotteries Act* and the *Charter of the French Language*.

### Criminal Code.

Sections 206(1)(a) to (d) of the *Criminal Code* prohibit schemes for disposing of property "by any mode of chance". The Supreme Court of Canada has clarified that only games of "pure chance" are prohibited, not games that mix chance and skill. So long as the contest includes an adequate skill-testing component, it will not be in violation of the *Criminal Code*. For random draws, mathematical questions are a good

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## How to Launch a Successful Contest (continued)

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option, but overly simple skill-testing questions (e.g., “what is 31+24?”) are less likely to satisfy the legal test.

**Why do contests say “no purchase necessary”?** Section 206(1)(f) of the *Criminal Code* makes it an offence to “dispose of any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant or competitor pays money or other valuable consideration”. So your contest rules need to state that “no purchase is necessary”, and if there is a purchase component (e.g., “buy a bottle of BC wine!”), you must also include a non-purchase option.

Section 206(1)(f) must also be considered in contests where it is contemplated that contest entrants will provide **user-generated content** (such as a photo, a video or a mobile application they have created) with their entry. Although there is not much guidance from the Canadian courts on the issue, user-generated content could well be considered “other valuable consideration”. To be on the safe side, consider making user-generated content optional rather than mandatory wherever possible.

**NOTE:** There are significant penalties for violations of Section 206(1): indictable offence punishable by imprisonment for a term of up to two years; or summary conviction offence punishable by a fine of up to \$25,000.

### *Competition Act*

Section 74.06 of the *Competition Act* requires that there be “adequate and fair disclosure” of the following:

- number and approximate value of the prizes (market value or a range of possible values);
- details about the regional allocation of prizes, if applicable (e.g., if the contest covers Canada, “x number of prizes will be awarded per province/territory”);
- the contest closing date; and
- any facts that materially affect the chances of winning (e.g., odds of winning, eligibility rules).

The *Competition Act* also requires that the distribution of prizes cannot be “unduly delayed” and that contestants be selected or prizes distributed on the basis of skill or on a random basis.

**NOTE:** There are significant financial penalties for violations of the *Competition Act*: up to \$750,000 for a first time occurrence by an individual and up to

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## Ask Risk

### A colleague’s behaviour makes me concerned for my safety—what do I do?

There are times when we may be stressed or distracted by life events and friends might notice changes in our behaviour. In very rare cases those subtle changes could signal potential risks of harm to ourselves or others. The key to reducing such potential risks in the workplace is to be able to distinguish those behaviours which might be of concern. If you ever become uncomfortable with a colleague’s or client’s behaviour there is help available to you.

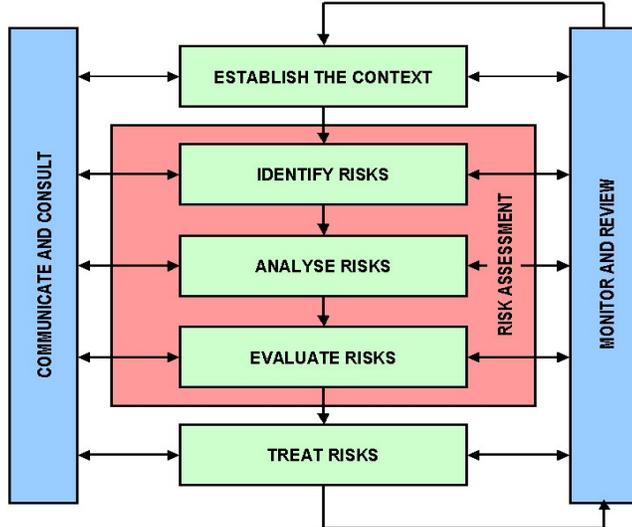
For the past four years the Government Security Office and Occupational Safety, BC Public Service Agency have worked to

manage any potential risks of violence. Together they developed and deliver the Threat of Targeted Violence Management Program. Their assessors have experience and specialized training in recognizing potential threats and are able to make recommendations for appropriate mitigation strategies.

Review the *Manager’s and Supervisor’s Guide on How to Recognize the Potential for a Targeted Threat of Violence in the Workplace* here <http://www.fin.gov.bc.ca/gws/pt/rmb/ref/managerSupervisorGuide.pdf>. You can reach your BCPSA OS specialist by email at [MyHR@gov.bc.ca](mailto:MyHR@gov.bc.ca) or contact the Government Security Office at [RMB@gov.bc.ca](mailto:RMB@gov.bc.ca) with any questions. <



## Context Matters!



The standard provincial risk management process diagram illustrates the elements of a formal risk assessment. You'll note the first step, Establish the Context, is not included as part of the risk assessment. It's done before risk identification and often gets neglected or skipped altogether. It is, however, perhaps the single most important step.

Let's use the example of the 2010 Winter Olympic Games to illustrate the importance of carefully considering context.

Planning for BC to host the Games began well over a decade before the Olympic torch was lit. The Vancouver 2010 Bid Society was formed 1998. A risk assessment was conducted to help the development of the formal bid for the Games – the “pitch” to the International Olympic Committee (IOC).

### Pre-Bid Context from the year 2000:

- BC had experienced eight consecutive years of employment growth, and a consistent annual growth in GDP of over 5%
- We had not yet witnessed the 9/11 attack on the World Trade Centre (2001), Madrid train bombings (2004) or London Underground bombings (2005)
- The world had not yet experienced SARS, Bird Flu, Indonesian Tsunami, Hurricane Katrina
- Annual snowfall at Cypress averaged 150”

### Games-time Context from 2010:

Fast forward ten years to the months before the 2010 Games began:

- We were well into the 2<sup>nd</sup> year of a global economic crisis; the BC government went from a \$4 Billion budget surplus in 2006/07 to a budget deficit of \$2.7 Billion
- Terrorism was now a household word; we had grown accustomed to the huge changes in travel security; Canada had troops fighting Taliban in Afghanistan; Bin Laden had explicitly targeted Canada; and the “Toronto 18” had been arrested on terror-related charges
- The H1N1 Pandemic was declared by the World Health Organization (WHO) in early June, 2009 and remained until August, 2010—well after the Games were over
- January 2010 turned out to be Vancouver's warmest in 35 years; one of the main Olympic venues, Cypress Mountain, was closed to the public a month before the Games to conserve snow

Any risk manager who suggested even one of these events as a risk back in 2000 would have been labelled a naysayer. Imagine the reaction of folks if he or she had suggested **all** these conditions would change so radically. Yet we all now understand the significant influence these conditions had on planning for the Games and risks they brought with them. They fundamentally changed the way we envisioned delivering on our Olympic commitments. Few contexts change this radically, but the Olympic experience serves as a great lesson to carefully consider the context in which you plan to operate, deliver services, or manage a project.

Risk Management Branch can help you establish the context in which you operate, and facilitate an examination of what conditions might change that can affect your ability to deliver on your goals and objectives. Contact us at [RMB@gov.bc.ca](mailto:RMB@gov.bc.ca) for support with conducting your next risk assessment. <

## Insurance Act Reforms

Significant amendments to the *Insurance Act*, and new regulations necessary to fully implement the reforms, will come into force on July 1, 2012. These changes enhance consumer protection by modernizing the legal framework which regulates contracts of insurance (other than vehicle insurance).

The improvements to the *Insurance Act* and regulations also respond to industry needs by reducing red tape and supporting new ways of doing business.

In fall 2009, the British Columbia Legislature passed the *Insurance Amendment Act, 2009*, which implements a comprehensive rewrite of legislation governing BC insurance contracts.

Highlights include measures to protect insurance consumers such as reforms to:

- Lengthen the limitation period in which legal claims against insurance companies must be made to two years from one.
- Strengthen the language to clarify that fire coverage includes fires resulting from any cause, except those that are specifically excluded under the regulations.
- Allow for a 30 day "grace period" in which to pay overdue premiums for life and health insurance contracts.
- Provide consumers of group insurance products a right to obtain a copy of the key parts of those insurance policies.
- Improve dispute resolution mechanisms through a new requirement for insurers to put in place internal complaint resolution procedures.
- Require insurers to become members of an "ombudservice" organization for the purpose of resolving insurance disputes.

Regulations necessary to fully implement the 2009 legislative reforms will also come into force at the same time as the statutory changes. These regulations:

- Define classes of insurance for the purposes of the *Insurance Act*.
- Contain substantive provisions that:
  - ◊ require insurers to notify claimants of limitation periods and dispute resolution processes
  - ◊ prohibit the use of e-mail for contract terminations
  - ◊ provide a 10-day cooling off period for

life and accident and

- ◊ set out specific permitted exclusions from mandatory fire coverage

- Apply appropriate provisions of the Act to specialty insurance products/providers, such as home warranty insurance and captive insurers.
- Contain transition rules to clarify that certain new provisions do not apply retroactively to insurance contracts and claims.

A detailed summary of all the regulatory changes can be found at [http://www.fin.gov.bc.ca/cep/fcsp/detailed\\_list\\_of\\_regulatory\\_changes.pdf](http://www.fin.gov.bc.ca/cep/fcsp/detailed_list_of_regulatory_changes.pdf)

Provisions protecting the rights of innocent co-insured individuals to recover damages under insurance contracts were brought into force in June 2011.

The regulations have a delayed effective date to give insurers and insurance agents the time necessary to adjust insurance contracts and processes to meet the new statutory and regulatory requirements.

July 1, 2012, is the date the Alberta government has chosen to bring into force its very similar statutory and regulatory program; adopting the same effective date will benefit industry and consumers by ensuring an orderly implementation of the reforms.

A further six months transitional period until January 1, 2013, is provided to insurers to allow them to continue to use their existing license insurance classes for reporting and business authorization purposes. This additional time is necessary for both the insurance companies and the regulators to ensure an orderly update of business licenses issued to the approximately 100 insurers operating in British Columbia.

Policy holders with questions about their current insurance and the impact flowing from these reforms should contact their insurance broker/agent or insurance company. Further information is also available at <http://www.fin.gov.bc.ca/cep/fcsp/consultiAR.htm> or contact the Financial & Corporate Sector Policy Branch at 250-387-1269 or [fcsp@gov.bc.ca](mailto:fcsp@gov.bc.ca) <

## How to Launch a Successful Contest (continued)

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\$10,000,000 for a first time occurrence by a corporation; these penalties increase to \$1,000,000 and up to \$15,000,000 respectively for subsequent violations.

### Privacy Legislation

Relevant privacy law must also be considered when planning a contest. You will need to comply with the provisions of B.C.'s *Freedom of Information and Protection of Privacy Act* (FOIPPA) with respect to the collection, use and disclosure of contest entrants' personal information (e.g., name, address, phone number, email, image in photos or video, or opinions). In particular, you will need to inform entrants, through the contest rules and/or entry form, of the purposes for which their personal information will be collected and the statutory authority for this collection. You will also need to provide contact information for someone in your branch or division who can answer any questions entrants may have regarding the collection of their personal information.

Thought should also be given to any promotional activities involving contest winners – for example, in an online contest you may wish to include photographs of the winners on the contest website – as your release must contain appropriate language to

address these issues and to authorize the disclosure of personal information on the internet. You should also keep in mind that only the minimum personal information necessary for the purpose (e.g., operating the contest) should be collected.

### Quebec Law

Canada-wide contests that include the province of Quebec raise additional legal issues. Under the Quebec *Lotteries Act*, the Regie des alcools, des courses et des jeux has the authority to create rules governing

“publicity contests” in Quebec. Contest organizers must pay duties to the Regie, which vary depending on the value of the prizes and the geographic scope of the

contest, and must also file contest rules and certain other materials with the Regie within a specified timeframe prior to the contest launch.

In addition to the *Lotteries Act*, the Quebec *Charter of the French Language* requires all contest materials, including the contest rules and related advertising, to be made available in French, so you may need to engage the services of a translator. Quebec legal counsel will also need to review the rules to ensure compliance with Quebec law.

### Other Jurisdictions

If your contest includes other jurisdictions (either within or outside of Canada), you will also need to consider any other applicable legislative regimes.

### User-generated Content

As noted above, if the contest contemplates the submission of user-generated content, you will need to ensure compliance with the *Criminal Code* provisions but user-generated content raises intellectual property and privacy issues.

### Intellectual Property Issues

In the absence of any agreement to the contrary, the author of the user-generated content is the copyright owner, and the Province has no legal right to use the content (even for purposes connected with the contest, such as display of the material on the contest website) without the owner's permission. Consider how you will be using any user-generated content and what parameters will apply to this content (e.g., entrants may not submit material owned by another party), and ensure your contest rules adequately address these issues.

### Privacy Issues

User-generated content can also raise issues from a privacy perspective. Certain basic personal information will likely be collected on the contest entry form. If an entrant also submits user-generated content such as a photo, a video or a story, this content may include additional personal information. One option is to state in the contest rules that user-generated content must not contain the

(Continued on page 7)



## How to Launch a Successful Contest: The Contest Rules

### The Contest Rules

Contest rules establish the eligibility requirements and award conditions. Full disclosure of contest rules is essential not only to comply with the law, but also to provide contractual protections for the Province. Before drafting contest rules, you should be able to answer the following questions:

<b>WHY?</b>	<ul style="list-style-type: none"> <li>What are the objectives or business goals your program area hopes to achieve through this contest?</li> </ul>
<b>WHO?</b>	<ul style="list-style-type: none"> <li>Who is the intended audience? (provincial employees only, residents of BC, residents of Canada, anyone in North America, an international audience, a specific target audience such as youth in schools, First Nations, or visitors to provincial parks?)</li> <li>What is the age range of contestants? (minors? adult contestants only? open to all ages?) If minors can enter the contest and/or receive prizes, there are additional legal requirements.</li> <li>Who else needs to be involved? If sponsors are donating any of the prizes, you will need to enter into a sponsorship agreement with each sponsor.</li> </ul>
<b>WHAT?</b>	<ul style="list-style-type: none"> <li>What are the eligibility requirements and what do contestants need to do to enter and, if successful, claim their prize? (see discussion on <b>releases</b> on page 7) If the contest is adjudicated, what are the criteria for evaluating entries?</li> <li>What are the prizes, how many are there, and what is their approximate value? Is there a regional allocation of prizes?</li> <li>What information or materials are you collecting from contestants? (see discussion on <b>user-generated content</b> on page 5.) What information or materials are you giving to contestants (see discussion on <b>other considerations</b> on page 7)?</li> </ul>
<b>WHERE?</b>	<ul style="list-style-type: none"> <li>Where will the contest be held (if it is location-based)? Where can contestants enter (online, at a specific location)? Where can contestants get a copy of the full contest rules?</li> </ul>
<b>WHEN?</b>	<ul style="list-style-type: none"> <li>What is the internal timeline for launching the contest? This needs to be realistic and factor in time for drafting the contest rules, legal review (including review by legal counsel in other jurisdictions if the contest is international and/or includes Quebec), finalizing sponsorships, complying with regulatory and statutory requirements, and engaging in promotional activities.</li> <li>When does the contest start and when does it end? If the winner is selected by a random draw, when will the draw take place and where? If the winner is selected by adjudication, when will the winner be announced and when does the winner have to claim or redeem their prize?</li> </ul>
<b>HOW?</b>	<ul style="list-style-type: none"> <li>How do contestants enter? Consider whether entries are made online, through submission of hard copy entry form, or in person at a specific location. If you are running an online contest, you will need additional disclaimers for system glitches and errors, limitations on the number of entries, and provisions to address privacy issues and IP issues (see discussion on <b>user-generated content</b> and <b>privacy issues</b> on page 5) and your right to take down infringing or inappropriate material.</li> <li>How do contestants claim their prize?</li> </ul>

## How to Launch a Successful Contest (continued)

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entrant's personal information. Depending on the nature of the contest, however, this may not be practical, and you may need to address this issue in the contest rules.

A more difficult issue is the inclusion of third party personal information in user-generated content (e.g., an entrant submits a photo of him/herself and three friends). Since FOIPPA provides that personal information must be collected directly from the individual, except in certain specified circumstances, this issue

requires careful consideration. Again, the contest rules can state that user-generated content must not include third party personal information, but if this is not practical given the nature of the contest, your contest rules will need to include specific language (such as directing entrants to get the written consent of third parties) to ensure that the collection, use and disclosure of any third party personal information complies with applicable law.

### Releases

Before you award any prizes, you should ensure that contest winners sign a release. The release document should, at a minimum, require the winner to confirm their compliance with the contest rules, including their acceptance of the prize as set out in the rules, and to release the Province from any liability associated with their participation in the contest or use of the prize. If additional personal information is collected from contest winners (e.g., photos), the release should also address how such information will be used and/or disclosed.

### Other Considerations

Running a contest in a government context raises some unique considerations. If you are providing any Province-owned material for the use of contest entrants (e.g., provision of data sets for entrants to use in building a mobile app), this will need to be approved in advance by the Intellectual Property Program. Relationships with sponsors may include joint advertising or press releases, or

the use of a sponsor's trademark on a government website. These issues should be discussed in advance with your Government Communications and Public Engagement representative. Complex privacy issues may entail liaison with the Knowledge and Information Services Branch of the Office of the Chief Information Officer, while Canada-wide or international contests may involve the Intergovernmental Relations Secretariat.

### Conclusion

Contests can produce great results, but they do require careful planning in order to avoid the legal pitfalls. There is no "one size fits all" template or solution, but we hope that this article provides some guidance that will help to ensure your future endeavours in this area are a success.

**NOTE: This article is not intended to replace legal advice that you may require for your specific contest, so please contact your ministry solicitor for further advice.**

Government staff can also visit the L@W Matters website for more articles: <http://gww.legalservices.gov.bc.ca> <



## 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>
- ❖ **Canadian Risk Management (CRM) Program**  
**Simon Fraser University** offers evening courses toward the CRM designation in downtown Vancouver and downtown Victoria. For more information call them at 778-782-5095, see <http://www.sfu.ca/continuing-studies.html> or send an email to [learn@sfu.ca](mailto:learn@sfu.ca)
- ❖ **University of Northern British Columbia** offers weekend courses toward the CRM designation in Prince George. For more information call them at 1-866-843-8061, see <http://www.unbc.ca/continuingstudies/certificates/riskmanagement.html> or send an email to [cstudies@unbc.ca](mailto:cstudies@unbc.ca)

## Risk Management Conferences

- ❖ **2012 RIMS Canada Conference** September 9-12, Saskatoon SK  
<http://rimscanadaconference.ca/>
- ❖ **2012 Western Regional RIMS Conference** September 17-20 Colorado Springs CO  
<http://rockymountain.rims.org/>
- ❖ **RIMS 2013 Annual Conference** April 21-24 Los Angeles CA  
<http://www.rims.org/annualconference/FutureConferences/Pages/default.aspx>

## Risk Management Resources

- ❖ **Risk Management Magazine** <http://www.rmmagazine.com>

## About Our Organization ...



RMB collects aggregate information about volunteers undertaking activities for the Province to ensure there is liability and accidental death and dismemberment insurance in place for them in the coming year. These insurance policies protect the Province and the volunteers in the event of a claim arising from their authorized duties. Ministries who engage the services of volunteers contribute their proportionate share of the insurance premiums, each paying a fraction of the cost of this important coverage. For more information about our volunteer insurance program visit <http://gww.fin.gov.bc.ca/gws/pt/rmb/ref/OverviewVolunteers.pdf>

- ❖ Visit our Internet site: <http://www.fin.gov.bc.ca/PT/rmb/index.shtml>
- ❖ Be sure to bookmark our intranet! Government staff may visit us at:  
<http://gww.fin.gov.bc.ca/gws/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.*

## At Risk

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### MAILING ADDRESS:

PO Box 3586  
Victoria BC V8W 1N5

### PHONE:

(250) 356-1794

### FAX:

(250) 356-6222

### CLAIMS FAX:

(250) 356-0661

### E-MAIL:

[RMB@gov.bc.ca](mailto:RMB@gov.bc.ca)

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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](mailto:RMB@gov.bc.ca) or faxed to (250) 356-6222.