

AT RISK

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

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Please feel free to copy and distribute this edition of *At Risk*.

To receive future electronic editions of *At Risk* please e-mail 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 are featuring the expert advice of several guest contributors.

First, Brad Buck of the BC Public Service Agency highlights the personal impact of WorksafeBC rules on homeowners when having work done around the house by contractors. Resources are available to help you understand your obligations.

Next, Dorothy Wong and Wanda Kelley of BC's Legal Services Branch provide an in-depth exploration of the risks and benefits of social media in context of the BC public sector. There is a lot to consider for these relatively new tools. A must read.

We recap the new Risk Management policy and how RMB staff can help ministries implement the new reporting requirements.

The 2013 RIMS Canada Conference is coming to Victoria in October. This is a fantastic learning and networking opportunity and not to be missed! A special conference package has been arranged for ministry employees. See the last page for more information.

We hope you enjoy this edition. Thank you for reading *At Risk* and we welcome your comments, questions or feedback at

RMB@gov.bc.ca

Phil Grewar, Executive Director

Homeowners and WorkSafeBC

*Author: Brad Buck, CRSP
Manager, Safety Advisory Services
BC Public Service Agency*

*Do you own a home? Yes.
Are you an employer? No.
Are you **sure** you aren't an employer?*

Recently there have been some high profile cases involving homeowners that highlight some little known parts of Workers' Compensation Law in BC. As a homeowner (or even a renter that is having work done on your behalf) you may have some WorkSafeBC obligations that you didn't know about and that could have costly consequences.

WorkSafeBC (WSBC) administers the workers' compensation insurance program that all employers pay into to ensure that any worker injured on the job receives any required medical treatment and/or wage loss benefits. The definition of "employer" under the Workers' Compensation Act is

very broad and includes homeowners. If you are completing renovations, building a home or hiring long term help you may either need to register as an employer with WSBC or ensure that the company has WorksafeBC coverage.

If you are hiring someone to work around your house for less than 8 hours a week or for a specific job that will be less than 24 person hours work, then you will not be required to register as an employer with WSBC. This covers situations such as hiring neighbourhood kids to look after your lawn or shovel snow for the season or having someone come in for a short, specific project like painting a fence. There is also an exemption for child care work for before/after school care for up to 15 hours per week

If you hire a worker for more than 8 hours on average a week, or for a larger project

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Homeowners and WorksafeBC (continued)

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that will require more than 24 person hours, you should register as an employer with WSBC and you will have to pay premiums to WSBC based on the amount of wages you pay the workers. Note this applies when you are hiring individual workers (part time or full time), *not a company*, to do the job(s).

When you hire a *company* to work in or around your home, always ask them if they have WSBC coverage. Check their information by requesting an online clearance letter from WorkSafeBC before they begin work. Clearance letters can be quickly and easily obtained here: http://www.worksafebc.com/insurance/managing_your_account/clearance_letters/default.asp

It is vital to ensure the company you hired has WSBC coverage and continues to have coverage for the duration of the project. If a worker of the company sustains an injury you may be responsible for the cost of the accident (medical treatment, wages, etc.) if the company does not have current WSBC coverage; or you may be responsible for paying the premiums of the company.

There is also an advantage to ensuring that you or your contractor has WSBC coverage: it removes the right for an injured employee to sue for damages. They can only make claims under the no-fault *Workers' Compensation Act*, limiting your liability.

If you are having work done where there will be multiple contractors on site, you are building your own home or have situations where one contractor may affect the safety of another contractor at your house, you may require a "Prime Contractor" under the *Workers' Compensation Act*. If a Prime Contractor is not designated in writing the role defaults to the owner, YOU!

The role of a Prime Contractor is to coordinate safety activity on the worksite and establish a system or process that will help ensure compliance with the *Occupational Health and Safety Regulation*; not something the typical homeowner wants to try and take on.

In most cases, on a large job with a general contractor and multiple trades on site, the general contractor will be the Prime Contractor. But you must ensure that you designate the Prime Contractor in writing, so ensure it is in the building contract, either attached in a schedule or memo signed by both parties.

As a homeowner, you can 'accidentally' be a Prime Contractor if you hired different companies to be at your home at the same time. For example, you hire an exterior painting company and a company to fix your deck and they are on site at the same time. These two companies may affect each other's safety and will require a Prime Contractor to coordinate. In this case

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WorksafeBC Resources to Help Homeowners

- ⊙ Renovating and building homes: http://www.worksafebc.com/publications/how_to_work_with_the_wcb/Assets/PDF/homeowner.pdf
- ⊙ Clearance Letters: http://www.worksafebc.com/insurance/managing_your_account/clearance_letters/default.asp
- ⊙ Hiring Contractors Bulletin: http://www2.worksafebc.com/i/posters/2005/WS%2005_05.htm
- ⊙ Prime Contractor Information: <http://www2.worksafebc.com/publications/ohsregulation/Policies-WorkersCompensationAct.asp#SectionNumber:D3-118-1>

Homeowners and WorksafeBC (continued)

(Continued from page 2)

approach one of the companies and ask them to be Prime Contractor (and designate it in writing) or simply schedule the companies to be there on different days.

It is also possible to require a Prime Contractor even if the two companies are not on site at the same time but will affect each other. This tends to be the case on complex and high risk projects, so it is best to ensure a Prime Contractor is designated and if you have any doubts contact WSBC's Prevention Department.

If you are acting as your own Prime Contractor, you may want to contact the Employers' Advisers Office who provide free, unbiased advice about safety, claims and dealing with WSBC: <http://www.labour.gov.bc.ca/eao/>

One final item: condominium stratas have the same obligations as homeowners (and a few more). If you are involved with the strata, best to ensure the strata is asking for WSBC coverage from any contractors on site. Otherwise your strata's reserves could be paying for a workplace injury. <



Social Media In the Government Context

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

Social media, such as blogs and social networking sites like Facebook and Twitter, have changed the face of communication in the workplace. They allow information to be provided quickly to large numbers of people and can thus be extremely effective tools for networking and interactive dialogue. Their use in the workplace, however, can raise a number of legal issues.

Types of Social Media

In the government context, social media initiatives can be divided into three types:

1. those that involve government-created social media (e.g. a blog on a ministry website);
2. those that use social media tools or services provided by an external service (e.g. Facebook, Twitter, YouTube, LinkedIn, Tumblr); and
3. "hybrids" that combine the two or that use multiple social media platforms.

While some of the issues are common to all three types, each type also raises unique considerations.

Government-Created Social Media

Until fairly recently, government used the internet primarily as a "one-way street", that is, to provide information to, rather than actively engage with, the public. With the advent of social media, government internet

use has become much more interactive.

There are now government websites that allow people to engage with government in a more dynamic way, such as through a blog or through an interactive application ("app"). There are obvious benefits to this approach, but it also creates certain risks. A government blog, for example, may provide a very public forum for defamatory comments. A government app might expose government to a claim of intellectual property infringement.

The key to minimizing risk is careful planning. Before the launch of a government blog, consider the target audience, the subject matter, and the options for managing the ongoing administration of the blog. Who are the users of the blog – government employees, the general public, or both? How much editorial control will government retain? Will certain types of content (e.g., defamatory or infringing content) be prohibited and/or removed? Will content submitted to the blog be monitored, either before or after it is posted? These and any other details about how the blog will operate should be clearly defined in a "moderation policy" that is communicated before people begin using the blog. On a practical level, consider whether there are internal resources available to monitor and update the blog, as it will reflect poorly on your initiative if the blog is

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RIMS Canada Conference Preview

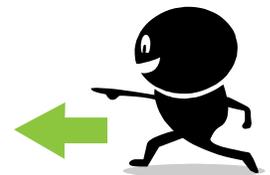


2013 RIMS Canada Conference October 6-9, 2013 at the Victoria Conference Centre <http://rimscanadaconference.ca/>

Join risk and insurance professionals on a voyage of **Discovery** at the 2013 RIMS Canada Conference. Held only once every ten years in BC, here's your chance to attend this premier event with minimal travel expense. Engage, network and exchange ideas with leading industry professionals, including conference sponsors and exhibitors. Featuring "out of this world" plenary speakers and a full education program that includes topic-specific streams: Enterprise Risk Management, Risk Management, Claims, Legal, Environmental and Technology.

For program details and registration visit <http://rimscanadaconference.ca/registration.html>

BC ministry employees can email registration@pophasemail.com to receive details of a special RIMS Canada Conference package offer available only to government staff.



Ministry Level Risk Registers are Easier than You Think

The updated [Core Policy and Procedure Manual, Chapter 14, Risk Management](#) sets out new risk management reporting requirements applicable to all ministries. These include the obligation to compile and report upon corporate-level risks annually, with semi-annual reporting on the status of proposed mitigations.

Meeting these new requirements does not need to be onerous. Risk Management Branch is committed to helping all ministries meet their risk reporting obligations. We just ask that you do a bit of preparation first, using one of these two methods:

1. Identify risks associated with the achievement of the goals and objectives of the Service or Business Plan; ask each division: "What might stand in the way of us delivering on this goal/objective?"
2. Ask each division to identify their most critical programs, services, or deliverables, and for each of those, identify what they are most worried about.

Either method should generate a list of possible risk events – uncertainties that might affect the strategic goals of the

ministry. From there the risk management process builds on what you already know: what it is you're in business to do.

The process can be reduced to the following questions:

- What are our Goals, Objectives, Milestones, and Critical Paths?
- What **EVENTS** might prevent their achievement?
- What might **CAUSE** those events?
- What might the **IMPACTS** be?
- What are we doing about it now?
- Is that enough? Are we comfortable with that?
- If not, what else should we do?

Completing a strategic ministry-level risk assessment and compiling the accompanying risk register is a relatively easy process and should not consume a lot of time or resources. Once established, a quick update of the risk register on the agenda of your quarterly performance reviews or ministry executive meetings is all that's required to effectively manage risks and fully meet the requirements of the new risk management policy on an ongoing basis.

Contact us for assistance with your risk assessments: RMB@gov.bc.ca <

Social Media (continued)

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launched and then neglected.

It is also advisable to post “terms of use” to address potential legal issues such as copyright ownership and collection, use and disclosure of personal information. Terms of use should be clearly brought to the attention of blog users, and should be displayed in such a way that the user must accept them before using the blog, as otherwise they may be unenforceable. See, for example, the court’s discussion on the enforceability of electronic contracts in *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196. (<http://canlii.org/en/bc/bcsc/doc/2011/2011bcsc1196/2011bcsc1196.html>)

Careful planning is also vital when creating and launching a government app. You will need to ensure, for example, that apps created for government initiatives are in fact owned by government. Generally speaking, this will be the case for apps created by government employees in the course of their employment or by contractors under the standard provisions of the General Services Agreement (“GSA”), but may not necessarily be so for apps created by government employees on a volunteer basis on their own time or by contractors if the standard provisions of the GSA have not been used. It is also important to consider the availability of internal resources to maintain and update the app, as rapid changes in technology may mean that updates for or new releases of the app will need to be provided on a regular basis. Some basic support for app users (e.g., a help line) may also be required.

Terms of use are also advisable for government apps, as many of the same legal issues that arise in the context of a government blog also arise in this context. It is important, for example, to let users know how the app can (or cannot) be used and that the user, not government, is responsible for any misuse of the app. Terms of use should also address copyright ownership, privacy issues, limitations of liability, disclaimers and exclusions of warranties. (While these are some of the issues that should be addressed, the provisions of terms of use for both blogs

and apps are context specific, and should be developed on a case by case basis with advice from your ministry solicitor.)

As with any government-created materials, it is important to determine whether any government-created social media content that does not belong to government. In some cases, the government may not be able to release the material it has created unless third party content is removed. In others, including third party content may limit the way in which the government-created material can be used. This issue should be carefully considered before any release of government-created social media, as use or distribution of content that government is not authorized to use or share could result in the government being sued for copyright infringement.

Social Media Provided by an External Service

Government’s “Guidelines for Conducting Citizen Engagement, Specific to Social Media” referred to in the “Key Resources” section below can help to identify some of the common issues that arise when using external social media. Some of the key issues are also discussed below.

Social media services or tools provided by an external service typically require a user to agree to the service provider’s terms of use. In some cases, it is necessary to indicate acceptance (eg, by clicking “I agree”), while in others use of the service constitutes acceptance. It is important to read the whole of the terms of use before accepting them, as accepting them in your capacity as a government employee has broader implications than accepting them for your private use. The terms of use are likely a legally binding contract which will apply to government, and which may raise significant legal issues.

Terms of use often require the government to indemnify the provider of the social media service or tool. These provisions can be very broad, and may require government to indemnify affiliates and related companies of

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Social Media (continued)

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the service provider or even third parties such as telecommunications carriers. They may also require government to accept responsibility for the actions of its contractors and subcontractors. Agreeing to such terms creates a contingent liability for government. Before accepting any such terms, government employees are required by law to obtain the written approval of the Minister of Finance or the Executive Director of the Risk Management Branch (“RMB”). (See <http://gww.fin.gov.bc.ca/gws/pt/rmb/indemnityapproval.stm>.)

Many terms of use also contain very broad language exempting the service provider from any responsibility for the service – for example, to ensure that the service works properly, or to ensure that information provided through the service is secure or will continue to be accessible. Such terms should be carefully reviewed to ensure that risks associated with using the service are clearly identified and, if possible, mitigated. As noted in the “Key Resources” section below, RMB can assist in conducting a risk assessment and identifying mitigation strategies.

Privacy issues are a key consideration in this context, as many external services (e.g., Facebook, YouTube) deal with the personal information of both the users of the service and, potentially, of third parties. In addition, many external social media service providers have their own privacy policies, which in many cases are not compatible with government’s privacy policies or with the provisions of the *Freedom of Information and Protection of Privacy Act*. Intellectual property issues also need to be considered. Typically, external social media services allow users to retain ownership of content submitted to the service, but this may not always be the case. Many services also stipulate that broad licensing rights must be granted to the service itself and/or to other users of the service. In order to comply with these terms, you will need to ensure that government either owns any material submitted to the service or has sufficient rights in the materials to grant such a license.

Before accepting terms of use or using an external social media service or tool, these and any other issues should be identified and addressed to ensure compliance with government’s legal and policy requirements. As noted above, indemnities must be reviewed and approved by RMB. Privacy issues should also be considered at the outset of any project involving use of third party social media, and a Privacy Impact Assessment (“PIA”) should be completed. Legal Services Branch must also review the terms of use and any other applicable legal documentation (e.g., privacy policy). Any licensing terms will require the approval of the Intellectual Property Program (“IPP”), and, if the licence includes government logos or marks, of Government Communications and Public Engagement (“GCPE”).

Finally, it is worth noting that external social media services typically reserve the right to change their terms of use at any time, often without directly notifying users of the service. You may thus need to review the terms of use on a periodic basis to identify and address any changes.

Hybrids

Some initiatives may involve both government-created social media and social media provided by an external service, and/or social media tools or services from multiple external services. A government app, for example, may be distributed through the Apple App Store, or a government Facebook page may incorporate a Tumblr-based blog. In this context, you will need to consider each element separately, and also how these elements interact with each other.

As with any initiative that involves social media provided by an external service, any terms of use applicable to the service or tool will require legal review. If your social media initiative involves more than one external service, it will be necessary to review all of the documentation to ensure that there are no conflicts between terms of use from different service providers.



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Social Media (continued)

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Where government-created materials are incorporated in, distributed through or otherwise interact with external social media, you should also consider whether any government-created materials require separate terms of use, as external service terms of use may not be effective in protecting government from legal risk. Some external services require separate terms of use for government-created materials, while others specify that any government terms of use must include certain provisions. Failure to comply with these requirements could result in the government being sued for breach of contract.

Key Resources

Social media can be an effective part of your initiative. Addressing the legal and policy issues raised by the use of social media as part of your initiative through careful planning will help to ensure that your project is a success. Please see the “Helpful Resources” section below for some resources that may be helpful to you. <

NOTE: This article is not intended to replace legal advice that you may require for your specific initiative, so please contact your ministry solicitor for further advice. Ministry staff can also visit the L@w Matters website for more articles. <http://gww.legalservices.gov.bc.ca/>

Social Media: Helpful Resources

- ⊙ The Ministry of Citizens’ Services and Open Government has published “**Guidelines for Conducting Citizen Engagement, Specific to Social Media**”, available at: http://www.gov.bc.ca/citz/citizens_engagement/index.html. This document provides a useful overview of some of the key issues to keep in mind when considering the use of social media provided by an external service. It also provides links to other resources for assistance with specific issues such as intellectual property and information security.
- ⊙ The **Office of the Chief Information Officer** provides several tools to assist in dealing with privacy issues in the social media context – see http://www.cio.gov.bc.ca/cio/priv_leg/foippa/guides_forms/guide_index.page. These include corporate PIAs designed to streamline the PIA process and reduce duplication across government, along with tipsheets to help you determine when the corporate PIAs may be used. Knowledge and Information Services staff can also offer support and assistance throughout the PIA process. You must complete a PIA for every new social media initiative – this process will help to ensure that your use of social media is consistent with the privacy protection provisions of the *Freedom of Information and Protection of Privacy Act*.
- ⊙ **Risk Management Branch**, in addition to review and approval of indemnities, can assist in a more general risk assessment of your initiative. This may be particularly helpful where the initiative is large in scale or is particularly complex or innovative.
- ⊙ In addition to its role in approving any licensing terms contained in an external social media service’s terms of use, the **Intellectual Property Program** can assist with identifying intellectual property issues, such as ownership of materials created for government apps.
- ⊙ **Government Communications and Public Engagement** should be consulted if your initiative involves public relations or communications issues, or any use of government logos or marks by an external social media service.
- ⊙ Your **ministry solicitor** can also assist throughout the development of your initiative, advising on potential legal issues and reviewing any terms of use or other applicable legal documentation. <

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 778-782-8000, see <http://www.sfu.ca/continuing-studies.html> or send an email to csreq@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

Risk Management Conferences

- ❖ **2013 RIMS Annual Conference** April 21-24 Los Angeles CA
<http://www.rims.org/RIMS13/>
- ❖ **2013 Western Regional RIMS Conference** September 15-18, 2013 Park City, UT
<http://rockymountain.rims.org/RockyMountainChapter/Home/>
- ❖ **2013 RIMS Canada Annual Conference** October 6-9, 2013 Victoria, BC
<http://rimscanadaconference.ca/registration.html>

Risk Management Resources

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

About Our Organization . . .



Our Director of Client Services for Core Government and Crowns, Glen Frederick, received another award in February 2013. The Deputy Ministry of Finance, Peter Milburn, presented Glen with the Queen's Diamond Jubilee Medal for his significant contribution and service to the province and to our community. Glen was recognized for his significant contribution to the evolution of risk management in the BC public sector. This award also acknowledges his many years of coaching community football teams, teaching university-level risk management courses, and for his involvement with the Risk and Insurance Management Society. Congratulations Glen!

- ❖ Visit our public Internet site: <http://www.fin.gov.bc.ca/PT/rmb/index.shtml>
- ❖ Government staff: be sure to bookmark our Intranet site!
<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.

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<http://www.fin.gov.bc.ca/PT/rmb/AtRisk.shtml>

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.