



NEWSLETTER

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MAY 2012

MESSAGE FROM RIMS CANADA COUNCIL CHAIR BETTY CLARKE

As all of you look forward to spring, I look forward to working with the RIMS Canada Council (RCC) in my new capacity as Chair. My appointment was effective January 1, 2012. I am very pleased and honoured to have received this appointment. I take pride in the fact that my peers chose me for such an important and challenging role. I promise to do my very best to represent the RCC, its subcommittees and of course RIMS. I have big shoes to fill following behind Tino Brambilla, Kim Hunton and Glen Frederick, just to name a few of the previous dedicated RCC Chairs.

The RCC is very pleased to provide RIMS members in Canada with regular updates via this newsletter. We welcome our new editor of this newsletter, Carrie Green, a very dedicated volunteer of the RCC, now back with us as a member of the Communications and External Affairs Committee. We need to say a big thank you to Melissa Ferreira who did such a fabulous job with the design and issuance of so many previous editions of this newsletter. Melissa managed the RIMS Canada Newsletter since its most recent inception as a hard copy newsletter in September, 2006.

We are delighted to have very special news to share with you in this edition. The RIMS Canada Council held our bi-annual strategic planning session on January 27-28 in Victoria. One of the major accomplishments from this meeting is that the RCC identified the need to amend our mission statement in order to better address the needs of our members. I am pleased, on behalf of the RCC and its voting members to announce that our new mission statement is:

The RIMS Canada Council addresses the interests of Canadian RIMS members and their chapters in support of RIMS mission – “To Advance Risk Management for Your Organization’s Success”.

We believe that this new mission statement better identifies the RCC’s purpose. We are an important standing committee of RIMS, formed to concentrate on the needs of our Canadian members.

The 2012 RIMS Annual Conference in Philadelphia was in full swing during the printing of this edition of the newsletter. We are pleased to advise that two of our RCC Executive attended this very interesting and informative conference and they will no doubt have feedback for the rest of us, who were not able to attend. However, don’t despair as the annual RIMS Canada Conference this year has yet to take place. Word is that our friends in Saskatoon are well on the way to provide us with a great conference and venue September 9-12. If you have not done so already be sure to book your hotel for this year’s conference. To find out more information about the



RIMS Canada Conference, visit the official website <http://rimscanadaconference.ca>. We look forward to networking with you in Saskatoon.

The RIMS Canada Council meets face to face twice a year, once in January to review our goals and develop the action plan and once in September to review the progression of these goals. There are also regular conference calls at least bi-monthly. Therefore, any

issues you may have for referral to the

RIMS Canada Council can receive prompt attention as may be necessary. We are fortunate to have a variety of talents making up the RIMS Canada Council with a current mix of seasoned and new dynamic members representing the chapters.

The subcommittees of the RIMS Canada Council, the National Conference Committee (NCC), the Communications and External Affairs Committee (CEA) and the National Education Committee (NEC) continue to run in full gear. All of the RCC’s strategic goals are reviewed annually for completion and or amendment including any new goal developments. March is the time for the subcommittees to come together. It is at this time that they assign tasks to their members based on the RCC’s goals. This ensures we are all well on the way to success in achieving our goals and representing our members needs for 2012.

Betty Clarke



HORIZONS 2012: WHERE TODAY'S RISKS MEET TOMORROW'S SOLUTIONS

Come to beautiful Saskatoon, Saskatchewan for the 2012 RIMS Canada Conference, Horizons 2012, Where Today's Risks meet Tomorrow's Solutions!

Our chapter is buzzing with activity as we work together to ensure an amazing time is had by all. Saskatoon is one of the fastest growing cities in Canada. In fact, RBC and the Conference Board of Canada predict Saskatchewan will see the highest economic growth in Canada in 2012.

Horizons 2012 will be held in the newly expanded and renovated TCU Place (<http://www.tcuplace.com/>) in the heart of downtown Saskatoon – now a truly first class convention centre. You might even bump elbows with your favourite country music entertainer, as TCU Place is hosting various Canadian Country Music Awards



events September 8th & 9th!

Our Program Committee has confirmed several leading risk practitioners as keynote speakers, including: Hans Laessoe, LEGO; Dan Kugler, Snap-On Tools; Carol Fox, RIMS; and Craig Tilford, TELUS. Stay tuned to our website for a full description of the program, including topics for concurrent sessions.

We are confident that our social events will entertain and surprise you, and leave you wanting a little more of that famous

Saskatchewan hospitality!

The exhibit hall is over 60% sold, and filling quickly. Our industry partners continue to show their support, and all 104 exhibit booths will be eager to engage attendees. The exhibit hall will be alive with activity and surprises - it will be THE place to be!

Our six feature conference hotels - the Delta Bessborough, Sheraton Cavalier, Radisson, Parktown, Hilton Garden Inn, and the James Hotel - are located in beau-

tiful downtown Saskatoon within a 15 minute walk of TCU Place. Shuttle buses will take you between TCU Place and all conference hotels. Please remember that all conference room block hotel reservations must be booked through the on-line reservation system at <http://www.rimscanadaconference.ca/>

Horizons 2012 will go green as the first RIMS Canada Conference to eliminate the hard copy advance program in an effort to go paperless! Keep an eye out for email notifications, as we keep you informed of new developments and the advanced electronic program as it becomes available.

The Saskatchewan Chapter of RIMS, our co-chairs and our team of volunteers are excited to invite you to join us in Saskatoon at the 2012 RIMS Canada Conference from September 9 – 12, 2012.

RIMS CANADA COUNCIL MANDATE AND STRUCTURE

The RIMS Canada Council (RCC) is a standing committee of the Risk and Insurance Management Society, Inc. (RIMS), one of 18 committees and councils that report to the RIMS Board of Directors. The council represents RIMS' ten Canadian chapters and more than 1,100 Canadian members. It addresses the Canadian activities and strategic initiatives of RIMS, ensuring that products and services provided by RIMS address the needs of Canadian members and chapters while supporting the Mission and Strategic Plan of RIMS. The mandate of the RCC includes developing and implementing strategies to:

- increase the recognition of risk management as a profession within Canada
- enhance professional development opportunities for RIMS members in Canada
- increase the visibility of RIMS and the RCC before Canadian policymakers
- grow RIMS membership in Canada
- leverage the RIMS Canada Conference to communicate RIMS and RCC activities and accomplishments internally to members and externally to media, governments and other groups

- support effective volunteer succession planning
- promote the education activities available to Canadian risk managers with RIMS Professional Development Department, particularly those that support and complement the RIMS Fellow designation.

The RCC and its subcommittees are a unique structure within RIMS. Unlike other RIMS committees which appoint their members, each member of the RIMS Canada Council represents his or her chapter, and serves on the chapter's Board of Directors. The RCC members communicate chapter needs and activities to the RCC, and communicate RCC initiatives and activities back to their chapter. Each of the Canadian chapters has one vote on the RIMS Canada Council.

The RCC Executive is made up of a Chair, Vice-Chair, Secretary, Treasurer and Past-Chair. The Chair and Vice-Chair must be approved annually by the RIMS Board of Directors. In 2011, the RCC decided to transition to a new chapter representation model. In the new structure, members of the RCC Executive do not have to be the RCC representative for their chapter. If a chapter member is serving on the RCC executive, the chapter can decide to send

another representative as its voting RCC member. Executive members must have two years of previous experience either as chapter RCC representatives or subcommittee chairs. The transition to this new model will be complete in 2013.

Further support for the RCC comes from the RIMS Staff Liaison, RIMS Board of Directors Liaison and the RIMS Canadian Consultant.

The RCC is responsible for overall governance, goal setting and communication to and from the chapters, and its three subcommittees are responsible for implementing the goals. The three subcommittees are the National Conference Committee (NCC), National Education Committee (NEC) and Communications and External Affairs Committee (CEA). The chairs of the three subcommittees attend all RCC meetings. Each subcommittee also has a liaison from the RCC to assist and mentor the Chair, and to bring the RCC perspective to the committee. Subcommittee members are selected each year and serve two-year terms. Members are selected for their skill sets and experience, and to maintain a broad representation from the ten Canadian chapters.

The RCC is not a separate legal entity; it is part of RIMS. Although the RCC controls its own funds in coordination with RIMS

Chief Financial Officer, its financial statements are reported to and are part of the RIMS budgetary process and financial reporting, and the RCC's money is held in trust for the Canadian chapters.

The RCC follows a yearly calendar for meetings and planning. In January of each year, all RCC and subcommittee member terms begin, and the RCC holds its annual planning meeting. In order to visit each Canadian chapter, the planning meeting is usually held in the city where the RIMS Canada Conference will be held in the following calendar year. The RCC subcommittees hold their planning meetings in late February or early March of each year. RCC and subcommittee members often see each other at the RIMS Annual Conference in April or May, and help host Canada Night, an annual gathering for Canadians participating in the conference. The RIMS Canada Conference is held in September or October, and the RCC and the subcommittees hold in-person meetings prior to the conference. In October, the RCC Chair and Vice-Chair are approved by the RIMS Board of Directors for the following year. Nominations for subcommittee members for the following year take place in November and December. The RCC and the subcommittees also meet by conference call throughout the year.

RIMS CANADIAN CONSULTANT

The RIMS Canadian Consultant provides strategic and managerial support to the RIMS Canada Council (RCC) and its subcommittees and volunteers to help them achieve their strategic goals. Bonnie Wasser has been the RIMS Canadian Consultant since 2003.

Her services include specific tasks related to the RCC's goals, including volunteer succession and training, policy development and maintenance, membership development, professional development, advocacy and raising the profile of risk management in Canada. She maintains the RIMS in Canada website and helps produce this newsletter. She has collaborated with RCC

volunteers to write submissions to several federal and provincial government proposals expressing the views of Canadian risk managers, helped organize two Canadian Quality Forums, and worked to leverage the RIMS Canada Conference to raise the profile of RIMS and the RCC. Bonnie works closely with the RIMS staff in the New York office, and liaises with the RIMS Director of Membership and Chapter Services and the RCC Chair. She also works directly with the subcommittee chairs and volunteers.

Bonnie comments, "Over the years that I have worked with the RCC and Canadian RIMS chapters, I have seen an almost doubling of RIMS membership in Canada, and a

steady growth in the quality of the RCC's achievements. What has not changed is the dedication and commitment of RIMS volunteers – I am constantly impressed by their hard work and accomplishments".

The Canadian Consultant role evolved from the earlier role of Director, Legislative Affairs. When Lloyd Hackett, a former risk manager, retired from this position in 2002, RIMS and the RCC evaluated the support required to achieve the RCC's goals and for the further development of the subcommittee structure. They decided to broaden the role to include support of all of the RCC's activities rather than just the legislative area, and to contract with a Canadian association professional with experience in non-profit gov-

ernance and professional development as well as internal and external communications and government relations.

Bonnie has worked as an association management professional since 1989. She holds an MBA from the Ivey School of Business at the University of Western Ontario, and previously was the General Manager of Attractions Ontario and Senior Vice-President of the Canadian Marketing Association. She has completed consulting assignments for the Canadian Academy of Sport Medicine and the International Federation of Risk Management Associations, and is currently authoring a book on marketing for Canadian associations for the Canadian Society of Association Executives.

THE 2012 RIMS CANADA COUNCIL: NEW CHAIR, NEW MEMBERS, NEW MISSION & GOALS

■ By Steve Pottle, Chair CEA

The RIMS Canada Council (RCC) introduces a new Chair, new members, and announces a new mission statement and goals for 2012-2014.

In January 2012, Betty Clarke, City of St. John's (Newfoundland and Labrador Chapter) succeeded Tino Brambilla as the Chair of the RCC and welcomed the following new members to the Council:

- Paul Provis, Oxford Properties (Ontario Chapter)
- Valerie Barber, Province of Manitoba (Manitoba Chapter); and
- Michel Pontbriand, Desjardins Group (Quebec Chapter)

Betty's first job as Chair was to host the RCC at its annual planning meeting. Held in Victoria, British Columbia on January 27 and 28, the meeting included a strategic planning session to review the RCC's mission and objectives to maximize the value of RIMS membership in Canada.

Facilitated by Jill Levy, RIMS Director of Membership and Chapter Services, the strategic planning session allowed the RCC to review its 2010-2012 goals and objectives, identify its target audience,



Top Row, left to right: Tino Brambilla, Val Barber, Paul Provis, Betty Clarke, Jill Levy, Bonnie Wasser, Jeff Schaafsma
Middle Row, left to right: Steve Pottle, Robert Cartwright, Karin McDonald, Kim Hunton
Bottom Row, left to right: Roman Parzei, Michel Pontbriand, Ren Lips, Lynda Lyttle, Jacquie Rocheleau, Sue Mephram

review its mission statement, and develop new objectives for 2012-2014. One outcome from this meeting was agreement that the current RCC mission statement needed to better align itself with the new RIMS mission statement and to better articulate its mandate to support the Canadian RIMS Chapters and the Canadian risk management community.

The RCC updated and approved the following mission statement in February 2012:

The RIMS Canada Council addresses the interests of Canadian RIMS members and their chapters in support of RIMS mission - "To Advance Risk Management for Your Organization's Success".

To support the new mission statement, the RCC adopted the following goals for the RCC in 2012-2014:

1. Achieve effective volunteer leadership
2. Cultivate a vibrant, informed and engaged membership

3. Develop and deliver risk management education, thought leadership, tools and resources
4. Increase the influence, advocacy and profile of risk management in Canada as part of the Risk and Insurance Management Society, Inc.

At the strategic planning session, the RCC also developed Specific, Measurable, Attainable, Realistic and Time Specific (S.M.A.R.T) objectives to enable the 2012-2014 goals to come to fruition.

In March, the RCC held its annual subcommittee planning meetings and tasked its three subcommittees (National Conference Committee, National Education Committee, and Communications and External Affairs Committee) to develop action plans based on the S.M.A.R.T objectives.

"I would like to thank all of the RCC for a job well done. A special thank you is extended to Jill Levy, our facilitator, for keeping us on track and focused on the tasks at hand. While I believe in hard work, I also believe in taking the time to implement humour and light heartedness throughout each busy day."

Betty Clarke

RCC SUBCOMMITTEE UPDATES

NATIONAL CONFERENCE COMMITTEE (NCC)

■ By Bev Duthoit, NCC Member/Co-Chair Winnipeg 2014

The National Conference Committee (NCC) acts as a resource to each conference's Local Organizing Committee (LOC) and as a liaison between the LOC, the National Event Planner and the RIMS Canada Council. The committee is comprised of current and future conference co-chairs as well as members with previous experience working on RIMS Canada Conferences. Our current committee includes:

Karin McDonald, Chair
Hydro One

April Savchuk, Vice-Chair
Catlin Canada

Patrick Ryan, Secretary
Newfoundland Power

Roman Parzei, RCC Liason
City of Brampton

Doug Brown, Co-Chair Saskatoon 2012
City of Regina

Steve Matterson, Co-Chair Victoria 2013
BC Ferries

Bev Duthoit, Co-Chair Winnipeg 2014
MTS Allstream

Janet Stein, Conference Program Task Force
University of Calgary

We would like to thank our outgoing members, Kim Hunton (City of Ottawa) and Barbara Carscadden (retired) who chaired the very successful Ottawa conference in 2011. We would also like to welcome our newest member, Janet Stein (University of Calgary) who will be chairing the new Conference Program Task Force.

Our group recently had some lively and very productive meetings at the RIMS Canada Council subcommittee sessions in Montreal on March 2-3, 2012. We also had the opportunity to meet with members of the National Education Committee and the Communications & External Affairs Committee. All these committee members are an entertaining and hard working group of professionals. During the year, the NCC has monthly conference calls to ensure our group remains focused on the issues and that there is ample opportunity for current conference chairs to bring forward their LOC's issues and concerns.

The NCC is pleased to report significant progress on several initiatives that have been under development these



Left to right: Steve Matterson, Bev Duthoit, Janet Stein, Karin McDonald, Roman Parzei, Patrick Ryan.
Missing: April Savchuk, Doug Brown.

past few months:

As noted above, the Conference Program Task Force is off the ground running as Janet works to build her committee with representation from across the country. We are very pleased to have Janet lead this initiative and are looking forward to supporting her efforts in this critical component of the annual RIMS Canada Conferences.

Work continues on the conference branding strategy (in conjunction with the Communications and External Affairs Committee) focusing on signage at the conference sites, design of the conference website as well as the presentation of the conference exhibit booth.

Further refinements are being made to the Conference Planning Manual which is the

living document that acts as the key resource for LOC's.

Consideration is being given to implementing an information gathering system such as bar-code scanning equipment for use at sessions and the exhibit hall in order to provide LOC's with important attendance data that will assist the LOC in making various space planning and financial decisions.

In recognition of the need to keep conference sponsors and exhibitors engaged and participating with the RIMS Canada Conference, the NCC has dedicated two members to meet face to face with key industry partners to ensure that we are hearing their concerns and effectively addressing their issues wherever possible.

We are also happy to report that our relationship with the National Event Planner, POP Kollaborative continues to be a very valuable resource for current and future LOC's. Their advice and assistance provides vital support during the conference planning stage as well during the event itself.

We are looking forward to seeing you all at the 2012 RIMS Canada Conference in Saskatoon in September!

NATIONAL EDUCATION COMMITTEE (NEC)

■ By Lynda Lyttle, NEC Chair

The National Education Committee (NEC) met in Montreal March 2nd and 3rd and reviewed the strategic goals and objectives of the RIMS Canada Council (RCC) in support of the RIMS Mission statement to advance risk management for your organization's success. The areas of education that were identified for our committee included: increasing available Professional Development speakers and tools for chapter meetings; identify risk management education opportunities for university students by the end of 2013; develop an outreach program for non-risk management students by the end of 2012. The committee identified a number of measurement criteria that will be used in the reporting of committee activities.

We are working with the Communications



Left to right: Tino Brambilla, Lynda Lyttle, Tony Lackey, Darius Delon, Bill Baker, Jean-Francois Baril, David Beal, Vanessa MacLean, Betty Clarke

& External Affairs Committee (CEA) to finalize a bilingual brochure promoting both the CRM and RF designations. We

anticipate this will be distributed to current students of Risk Management programs

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COMMUNICATIONS AND EXTERNAL AFFAIRS (CEA)

■ By Steve Pottle, Chair CEA

The Communications and External Affairs Committee (CEA) mandate focuses on internal communications, external communications and government relations.

The committee facilitates information sharing internally among Canadian RIMS members, Canadian RIMS chapters, the RIMS Canada Council (RCC) and RIMS. It promotes recognition of RIMS and the risk management profession within Canada. It supports RIMS and the RCC in building relationships with and promoting the position of the membership to Canadian government, regulatory organizations and other bodies.

Before looking ahead to what you can expect from the CEA in 2012, I would like to acknowledge the work of two members of the CEA who stepped



**Back Row, left to right: Carrie Green, Andrew Coward, Tim Lucko, Steve Pottle
Front, left to right: Virginia Tutino, Gail Cullen, Sue Mephram, Betty Clarke,
Ginny Brooks**

down in 2011, Melissa Ferreira, Toronto Transit Commission (Ontario Chapter), and Cathy Myles, Epcor Utilities Inc. (Northern Alberta Chapter). I would

like to thank Melissa and Cathy for their dedication and support of the CEA during their respective terms which ended in December 2011. Many of our past accomplishments would not have been possible without the support of these hard working individuals.

In 2012, the CEA roster consists of:

Steve Pottle, Chair
York University

Virginia Tutino, Vice Chair
Bombardier Transportation

Gail Cullen, Secretary
Nalcor Energy

Sue Mephram, RCC Liaison
Province of Saskatchewan

Tim Lucko
Province of Manitoba

Andrew Coward
University of Victoria

Ginny Brooks
Sun Life Global Investments

Carrie Green
CURIE

As you have read throughout this newsletter, the RIMS Canada Council has a new mission statement and new strategic goals for 2012-2014. The CEA met in Montreal in March to develop objectives to support the RCC strategic goals. Some of the CEA's objectives for 2012-2014 to deliver on these goals include:

- Continue to create a stronger network of information sharing of best practices and ideas between the Canadian

chapters through our semi-annual newsletter and through a series of directed outreach programs to chapter officers. We will also offer best practices through the RIMS Canada Council website.

- Improve the content and layout of the RCC and Conference websites to enhance member satisfaction and increased use.
- Develop bilingual RIMS marketing materials for use by all Canadian Chapters.
- Work with the National Conference Committee to develop stronger and more consistent branding strategies for the RIMS Canada Conference.
- Work with the National Education Committee to promote the CRM and RF designations through internal and external focused communication channels.
- Enhance industry partner engagement through increased activities at chapter events and continue to host the RIMS Canada Quality Forums.

The next two years promise to be exciting and busy ones for the Communications and External Affairs subcommittee!

“Give yourselves a pat on the back for adding such value to the RCC’s new Mission Statement. Each of you contributed greatly over the weekend in helping set those S.M.A.R.T. objectives required by the RCC and each of its committees. These objectives are imperative for us to reach the new goals we have set. This will allow us to better serve our RIMS Canadian members while adding to the prestige of RIMS as a whole. It became very apparent to me in having the privilege of watching all of you work that the RCC is very fortunate in having such exceptional subcommittee chairs and team members. What a wonderful knowledgeable group to work and network with. This creates not only great work for the RCC but is a real perk for us as individuals in expanding our day to day professional growth.”

Betty Clarke

NATIONAL EDUCATIONAL COMMITTEE (NEC)

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(via the instructors and institutions) as well as in the conference bags in Saskatoon in September, 2012. We have agreed to provide support to the CEA with educational content for their initiative to promote risk management in business publications.

We had discussions with the National Conference Committee (NCC) during our meetings and one of our committee members, Tony Lackey, has agreed to work with the NCC's newly struck task force on programming at the annual conference. We are very excited about this opportunity as it allows us to contribute to our strategic goals at the same time.

We also had discussions with the McGannon Foundation in Ottawa last September and another of our committee members, Jean Francois Baril, agreed to work with the McGannon Foundation to promote risk management education to students.

The committee will continue to communicate with the Canadian chapters this year to encourage and promote the financing and development of education related workshops, speakers and webinars. The committee will facilitate the ability of a chapter to request a RIMS PD workshop in their city or to hold any other professional development initiative related to risk management by providing funding up to \$2,000

per chapter to be used towards the costs related to workshop attendance. As part of our strategic goals we will also be developing a “Speakers Bureau” and popular webinars to share with the chapters that need assistance in their programming.

The committee will continue to keep in touch with educational institutions throughout the year looking for opportunities to promote risk management learning opportunities at the post-secondary level.

Our current committee members are:

Lynda Lyttle, Chair
Stantec

Bill Baker
Lilydale, Inc.

Jean-Francois Baril
Concordia University

David Beal
Ontario School Boards Insurance Exchange

Darius Delon
Tonko Realty Advisors Ltd.

Vanessa MacLean
Empire Company Limited

Tony Lackey
Carleton University

Tino Brambilla, RCC Liaison
Manitoba Hydro

We are looking forward to delivering on our strategic goals for 2012 and 2013.

COURT OF APPEAL UPHOLDS WAIVER

By Bruno DeVita

In the September, 2011 publication of this newsletter, I commented on a recent decision of the British Columbia Supreme Court in which the court enforced a waiver of liability in favour of the operator of a zipline at Whistler Mountain. The case was called *Loychuk v. Cougar Mountain Adventures Ltd.* It was, in my opinion, correctly decided. However, I questioned whether, from a broader risk management perspective, it was prudent to seek a judicial determination in a case such as this where a participant's safety was left entirely within the control of an operator. Specifically, those who employ waivers as part of their risk management arsenal may now be justifiably concerned that the perceived injustice arising from this decision might send up glaring signals to advocates of legislative reform. On March 15, 2012, the Court of Appeal weighed in on this issue and in a unanimous decision upheld the enforceability of the waiver (*Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122). In so doing, the Court rejected ar-

guments of the plaintiffs grounded in public policy and unconscionability. In communication by walkie-talkie, the individual directing Westgeest was not advised that Loychuck had become suspended in mid-course. Westgeest was allowed to proceed down the line and came into collision with Loychuck at considerable speed and without any ability to stop herself or slow her descent. The operator's employees were clearly negligent and so the only defence available to the operator was the waiver of liability that each of the plaintiffs had signed prior to the commencement of the activity.

In dismissing the action, the trial judge made a finding that the plaintiffs were well aware of what they were signing and its legal effect. He also found that the defendant had taken the necessary steps to bring the contents of the release to the attention of the plaintiffs and that there was sufficient time afforded to the plaintiffs to read it. The appeal focussed, however, on the issue of whether the Release was unconscionable or otherwise unenforceable at common law on policy grounds. In addressing the issue of unconscionability,

The Court then went on to consider whether there was an overriding public policy for not enforcing the release. Specifically, the court had to address the question of whether in circumstances where the participant's safety was left entirely in the hands of the operator, public policy dictates that waivers should not be applicable. The public policy concern is that the reliance on a waiver, and resultant immunity from liability, potentially discourages operators from employing proper safety practices, particularly where they involve financial cost. The Court considered several Law Reform Commission reports dealing with the issue of contractual fairness with respect to waivers. It concluded that none of the reports established an overriding public policy that would justify "judicial nullification of an agreement knowingly and voluntarily entered into by a person wishing to engage in an inherently risky recreational activity." The court referred extensively to the decision of the Supreme Court of Canada in *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, which dealt with



the conduct would have to be so reprehensible that it would be contrary to public policy and the public interest to allow the offending party to avoid liability through an exclusion or waiver.

The facts of this case were such that the court did not see a need for judicial intervention into the voluntary contractual relationship that existed between the plaintiffs and the defendant. The court was "not convinced that where a participant is injured through the negligence of an operator, there is such a difference between situations where participants have some measure of control and those where they do not, that the latter rises to this high level of public policy."

In concluding that the circumstances of this case did not warrant "judicial nullification" of the waiver agreement, the court made a point of stating that if there are policy reasons why such releases should be unenforceable, then any change in the law is properly a matter for the Legislature.

In the result, we now have an appellate decision which enforces a release of liability even in circumstances where the plaintiffs were subjected to the complete control of the negligent operator and had no means at their disposal to avoid harm. The decision suggests that judicial intervention into such agreements should not occur except where the operator knowingly or recklessly puts the public in danger. Of course, if conduct descends to this level, the participant would probably have a valid argument that the release wording (which excuses negligent, but not reckless or intentional conduct) is not sufficiently broad to release the operator of liability. In such circumstances, a public policy analysis would not be necessary. The court's comments about a change in law being a matter for the legislature again raises the spectre of waking the sleeping lion of legislative reform. In the meantime, it appears the release of liability will continue to win the day in our courtrooms.

*Bruno De Vita is a partner with the Vancouver law firm of Alexander Holburn Beaudin & Lang LLP (www.ahbl.ca). He is recognized in both *Lexpert* and *Best Lawyers in Canada* as a leading practitioner in the area of insurance law. Alexander Holburn Beaudin & Lang LLP is a member of The Arc Group of Canada, a network of independent insurance law firms across Canada (www.thearcgroup.ca).*



guments of the plaintiffs grounded in public policy and unconscionability.

The case involved two plaintiffs, Loychuck and Westgeest. They were injured when Westgeest was allowed to be sent down a zipline by Cougar Mountain employees at a time when Loychuck, who had immediately preceded her, was suspended on the line before reaching the bottom. Although the guides employed by the operator were

the Court first made it clear that there is no power-imbalance where a person wishes to engage in an inherently risky recreational activity that is controlled or operated by another. Equally clear in law is that it is not unfair for the operator to require a release or waiver as a condition of participating in such an activity. Previous decisions have held that such agreements do not in any way diverge from community standards of commercial morality.

the issue of unconscionability. In that decision, the Supreme Court of Canada held that while a residual power of the courts to decline enforcement of contracts may exist, such power "will rarely be exercised". Indeed, the court in *Tercon* suggested that it should only be exercised in circumstances where the person relying on a release has knowingly or recklessly put the public in danger by providing a standard product or service. In other words,

FLOOD RESPONSE IN MANITOBA

■ By Tim Lucko, MaRIMS

Although Manitoba has had substantial floods in 1995, 1996, 1997, 2006 and 2009, the difference between those events and the 2011 flood was one of magnitude and scope. The 2011 flood happened in multiple areas on the Red, Assiniboine, Souris and

In the fall of 2010, the December and January flood outlooks showed soil moisture levels and existing water levels across the province were high. Combined with high snowfall levels, the potential for severe flooding existed throughout much of the province. Staff readied themselves for action.



Saskatchewan Rivers, as well as Lake Manitoba and Lake St. Martin, to name a few, and some of these affected areas faced unprecedented flooding.

The first challenge was to know what was coming. However, flood forecasting can be difficult. Many factors can influence the size of a flood event and nature can change the situation at a moment's notice due to precipitation events that cannot accurately be predicted very far in advance, or uncharacteristic quick spring melts.

Once the outlook was established, the next step in preparation was to create a response plan(s) to meet the flood challenge. The 2011 flood response team was prepared to use technology in new ways, such as having Aquadams ready for deployment in rapid response trailers, using Hesco barriers for temporary flood protection, and pushing existing technology to new performance heights.

Occurring simultaneously was the updating of threat assessments to the existing



vertical and horizontal infrastructure in areas of historic flooding. The resulting threat in 2011 was cause to increase the scope of the assessments to ensure the flood proofing activities were reflective of the flood outlooks in non-traditional hazard areas.

The work invested in preparation and planning, as well as learning from past experiences, permitted staff to be creative and innovative when facing challenges on a previously unseen scope. Having experienced managers with historic flood response management skills proved invaluable. Their ability to predict effective mitigation strategies resulted in the reduction of losses that could have proven catastrophic. The new lessons learned have been documented to ensure future teams can avail themselves of best practices and innovations developed in the 2011 flood season.

The flood response also saw unprecedented resources applied. There was volunteer



employee participation from across all sectors of government, and participation by the military, local government and flood evacuees, to mention a few. The relationships among stakeholders, when faced with nearly impossible challenges, must be forged before the causal event to ensure an effective, timely and co-ordinated response.

It is likely, or even inevitable, that Manitoba will face flooding again. The 2011 flood tested and validated the already strong flood protection systems. This event showed the depth and value of ongoing emergency response planning, the testing of the plans and the value in challenging historical assumptions.

For information on the flood, you can go to the Government of Manitoba website at <http://www.gov.mb.ca/flooding/2011/index.html>

2011 RIMS CANADA QUALITY FORUM

■ By Steve Pottle, Chair CEA

RIMS and the RIMS Canada Council held the 2nd RIMS Canada Quality Forum event in November 2011 in Toronto.

The 2011 Quality Forum was attended by RIMS, RIMS Canada Council leadership, Canadian risk practitioners, senior executives from leading Canadian insurers and brokers, and our industry partners. The meeting focused on three areas of discussion:

- Challenges facing the insurance market for 2012
- Attracting, developing and retaining talent across the industry
- The value proposition of RIMS in Canada

Moderated by various representatives of the RIMS Canada Council, the two-hour meeting gave attendees the opportunity to share their insights and opinions on

each topic. Discussion topics included: the challenges faced by the industry and insurance clients when underpricing risks, what can be done by all industry partners to retain and expand the talent pool, and what industry partners want from RIMS in Canada.

The on-going goal of the RIMS Canada Quality Forum is to provide an opportunity to strengthen the ties between

RIMS in Canada, our industry partners, and cousin associations outside of the annual RIMS Canada Conference. The Quality Forum also allows the Canadian RIMS membership to demonstrate the value of its relationships with industry partners and cousin associations and to share ideas and practices for the mutual benefit of all members of the insurance and risk management community in Canada.

CANADIANS WIN AWARDS AT 2012 RIMS ANNUAL CONFERENCE

Canadians were award winners once again at the RIMS Annual Conference in Philadelphia in April.

Former RIMS and Quebec Chapter president Marc Darby was inducted into the Risk Management Hall of Fame. Mr. Darby's career at Bombardier spanned almost 30 years when he retired in 1998 as director of Risk Management and Insurance.

Three Canadian chapters won RIMS Membership Growth Awards in 2011. The British Columbia Chap-

ter showed the greatest number of new members of all of RIMS chapters, and grew by almost 20% to win a Membership Superstar Award. The Northern Alberta chapter also won a Membership Superstar Award, with 14.5% growth. The Newfoundland and Labrador chapter was awarded a Membership Star Award for its 8.3% growth. Overall membership in Canada grew to 1,115 members at the end of 2011, an 8% increase over the end of 2010. Congratulations to all the winning chapters and welcome to all new members!



At the RCC subcommittee meetings in March 2012, Karin McDonald was presented with the RIMS Canada Council Extraordinary Performance award in recognition for her innovative work and outstanding performance on the National Conference Committee.

Upcoming RIMS Professional Development Workshops in Canada

Editorial Policy

The RIMS Canada Newsletter is a publication of the RIMS Canada Council and is published periodically throughout the calendar year. The opinions expressed are those of the writers and volunteer members of the RIMS Canada Newsletter Editorial Committee. Articles submitted to the RIMS Canada Newsletter for publication are subject to the approval of the RIMS Canada Newsletter Editorial Committee. Approval of such articles is based on newsworthiness, and perceived benefit to the readership. All decisions of the RIMS Canada Newsletter Editorial Committee are final and not subject to appeal. Individuals submitting articles to the RIMS Canada Newsletter hereby acknowledge their acceptance of the RIMS Canada Newsletter Editorial Policy.

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Fundamentals of Insurance

Toronto, ON
June 11 - 12, 2012

Techniques of Risk Management

Toronto, ON
June 13 - 14, 2012

Enterprise-Wide Risk Management: Developing and Implementing

Ottawa, ON June 18 - 20, 2012

Business Continuity Management: Promote and Protect Enterprise Value

Ottawa, ON
August 2 - 3, 2012

Cyber Risk: Privacy and Data Security Risk Management

Winnipeg, MB August 13 - 14, 2012

Developing a Risk Management Program for Your Organization

Edmonton, AB
September 4 - 5, 2012

Integrating ERM & Strategic Planning

Saskatoon, SK
September 13 - 14, 2012

Accelerating ERM Theory into Practice

Calgary, AB October 1 - 3, 2012

Enterprise-Wide Risk Management: Developing and Implementing

Toronto, ON October 15 - 17, 2012

Enterprise-Wide Risk Management: Developing and Implementing

Montreal, QC November 5 - 7, 2012

Enterprise-Wide Risk Management: Developing and Implementing

Regina, SK
November 12 - 14, 2012

Contractual Risk Transfer

Richmond (Vancouver), BC

November 8 - 9, 2012

For a full listing of all RIMS professional development workshops in Canada and the U.S., please visit rims.org.