

Know your Construction Insurance Policy!

Construction has inherent risks that can be significant, which has resulted in the supply of a number of insurance products to cover such risks. For most construction projects, several different policies are secured that are intended to be complimentary. Common construction policies include:

1. Commercial General Liability (CGL): liability coverage that is fairly broad in scope to provide coverage for claims for injury or property damage;
2. Builders' Risk (aka Course of Construction): property insurance that provides coverage to both the owner and the contractor for the construction work itself while under construction, whether new or renovation;
3. Professional liability (aka error and omissions): liability insurance that provides coverage for loss resulting from the negligent provision of professional services. In construction, architects, engineers, design-build contractors and municipal building inspectors would secure this type of coverage;
4. Wrap-up: liability coverage that is project specific. Through one policy the construction team involved in a project, such as owners, developers, engineers, architects, project managers and contractors, received coverage against third party and general liability exposures associated with their project. Since the coverage is more limited in scope than a CGL and is project specific, a wrap-up policy is typically secured in addition to each construction team member's CGL policy; and
5. Boiler and Machinery (aka Equipment Breakdown): to cover equipment, such as air conditioning, heat-

ing or electrical systems, that is installed as part of the construction.

The recent Ontario case of *Pre-Eng Contracting Ltd. v. Intact Insurance Company et al.* 2019 ONSC 1700 (CanLII) explains the purposes of and interaction between CGL and Builders' Risk insurance policies. In this case, a school underwent renovations, including the repair of the roof of the gymnasium. The roofing contractor's negligence caused a leak in the roof, which resulted in significant damage to the gymnasium floor and losses caused by the delay in the project. The dispute in this case was between the CGL insurer and the Builders' Risk insurer, who both argued that the other's policy covered the losses. The intention of the CGL policy was to exclude coverage for those matters covered by the Builders' Risk policy. The CGL insurer's position was that the Builders' Risk policy covered any damage at the project site, whereas the Builders' Risk insurer argued that its policy only covered the portion of the project site that was actually being constructed or renovated. In its Reasons, the Court explained that the object of Builders' Risk insurance is "to ensure that the builder has sufficient insurance to complete his work in the event of an unforeseen failure" (para. 11), and pointed out that imposing an obligation on each contractor to purchase Builders' Risk coverage for the entire project would be inexorably expensive and would not be commercially viable. Consequently, the Court found that the Builders' Risk policy did not provide insurance coverage for the damage to the gymnasium floor or the losses caused by the delay in the project, and declared that the CGL policy did provide coverage for both of these losses. This case illustrates the importance

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of knowing the purpose and limits of each type of construction policy, to ensure that your construction project is properly protected.

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This article is intended for the general information of organizations in British Columbia. If your organization has specific issues or concerns relating to the matters discussed in this article, please consult a legal advisor.



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Adrienne brings over 24 years of legal experience in litigation and dispute resolution representing local governments and other public

entities, insurers and corporations, including in-house as Senior Staff Lawyer at Municipal Insurance Association of BC. Adrienne has represented and provided strategic and practical advice in relation to a variety of complex matters, including procurement, construction (including builders' lien, delay and defect claims), environmental, regulatory, expropriation, bylaw and FOIPPA disputes and processes, municipal jurisdiction, procedure, constitutional challenges, judicial reviews, remedial action orders, administrative hearing processes, contract claims, and privacy, insurance and risk management issues. Adrienne has extensive experience at all levels of Court in British Columbia, administrative tribunals, mediations and arbitrations. Adrienne regularly writes and presents on a variety of matters of interest to public entities and the construction industry.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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