

RISKinsight

The BMS Global Affinity Risk Management and Liability Magazine for the Royal Architectural Institute of Canada

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REFERENCE

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RAIC | IRAC
Royal Architectural Institute of Canada
Institut royal d'architecture du Canada

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RAIC: PROTECTING YOU & YOUR PRACTICE

Among the challenges facing architects today are contracts that unreasonably transfer risk and liability to professionals. That's why public-sector procurement reform is a crucial advocacy activity for the Royal Architectural Institute of Canada (RAIC). Our quest for more responsible approaches to procurement at the federal level includes:

- discussions with Brookfield Global Integrated Solutions about contract language on onerous liability and risk transfer, quality of procurement calls, and use of unlicensed practitioners;
- promotion of Qualifications-Based Selection (leading to a recently announced pilot project by Public Services and Procurement Canada);
- discussions with Public Services Procurement Canada on how the 10 percent fee portion in the consultant selection process is calculated and the lowest-fee approach.

Much of the work of the Royal Architectural Institute of Canada is of benefit to all architects in Canada, RAIC members and non-members alike. Now, there is more reason than ever to join the RAIC.

In addition to advocating for change related to contracts, fees, and other procurement practices, we also want to protect our members, their businesses, families, and assets. We are proud to announce that the RAIC will launch the RAIC Insurance Program, starting October 1, 2018, offering comprehensive liability insurance and other insurance at highly competitive rates. This member-only benefit includes:

- Professional Liability/Errors & Omissions
- Commercial General Liability
- Business Insurance
- Directors' and Officers' Liability
- Cyber Security and Privacy Liability
- Employment Practices Liability
- And a variety of other insurance offerings

The RAIC has partnered with BMS Canada Risk Services Ltd. (BMS) to provide insurance options tailored to the needs of architects – whether purchasing a full package or a top-up to existing or mandatory coverage. BMS is dedicated to working with member-driven organizations and provides coverage and services to more than 500,000 regulated professionals, including engineers and urban planners.

The RAIC is proud to support members with an insurance program that is cost-effective and provides extensive coverage and exceptional service. It is an example of the work we are doing to add value to membership.

Earlier this year, the RAIC board of directors formalized a strategic plan that identifies the strategic priorities for 2018-2020. They include:

- developing non-dues revenue and cost efficiencies to build long-term sustainability;
- attracting new members, especially licensed architects, to strengthen the voice of architects and architecture;
- reinforcing the RAIC's core competency of professional development and education, including Syllabus, with a plan that addresses the learning needs of members at different stages of their career;
- strengthening the RAIC's advocacy program to tackle the issues architects face, as well as promoting a better built environment for Canadians.

The RAIC will work with organizational partners to influence public sector procurement authorities, and private sector contracted service providers to enter into fair and balanced contracts and implement best practices in federal government procurement.

We are always open to feedback from the architectural community across the country about how we can better protect your interests.

It is our hope that all architects practicing in Canada will see value in what we do and choose to support this vital work. Membership information can be found at www.raic.org/raic/how-join.



Michael Cox, FRAIC
President,
RAIC



Mike Brennan
Chief Executive Officer,
RAIC

ABOUT **BMS** GLOBAL AFFINITY

BMS Canada Risk Services Ltd. (BMS) is the new and exclusive broker for the RAIC Professional Liability Insurance Program.

BMS's Canadian office is also the headquarters for BMS Global Affinity and was established in 2012 to create and deliver member-centric insurance programs to associations. BMS's approach is focused on providing specialist service from knowledgeable brokers, comprehensive and competitive coverage, industry-specific risk management and access to additional, value-added services.

Collectively, the BMS teams in Canada, Australia and Spain provide coverage and additional services to more than half a million regulated professionals globally through 70+ associations.

As the exclusive broker and provider of professional liability and business risk insurance to RAIC members, BMS is committed to delivering the very best the international and domestic insurance markets have to offer. For more information, please visit www.bmsgroup.com/canada.

Our additional contributor includes one of the RAIC insurance program partners Berkley Canada.

Berkley Canada is a Specialty Commercial Insurer that delivers exceptional customer service and expertise to small and mid-sized clients, who need liability insurance solutions over the long term. Berkley applies product experience, industry expertise and underwriting knowledge to develop fully-featured, realistically priced protection on which architects can rely on now and into the future.



Brian Gomes

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HELPFUL CONTACTS

You don't have to do this on your own. RAIC Professional Liability Insurance Program partners are here to help.

To report a:

Professional Liability/Business Professional Liability/Commercial General Liability/Cyber claim/Property or Business Interruption claim

Contact BMS at 1-844-294-2714 or email raic.insurance@bmsgroup.com

Employment Practices Liability claim

Contact Berkley at claims@berkelycanada.ca

bms.





NEW! The RAIC Insurance Program

As you've read in the introductions, the RAIC Insurance Program in partnership with BMS is available to all members from 1 October, 2018.

Through this new Program, RAIC Members will have access to comprehensive liability insurance products through BMS that are tailored to the needs of architects. Including:

- Professional Liability / Errors & Omissions
- Commercial General Liability
- Business Insurance
- Directors' and Officers' Liability
- Cyber Security and Privacy Liability
- Employment Practices Liability

Each of these products is outlined in more detail in the first article *What Coverage Do I Need? A quick guide to understanding what you need – and what you don't.*

Why BMS?

The RAIC is committed to continuously enhancing member value. The RAIC Insurance program in partnership with BMS enables members to access leading coverage, industry-specific risk management and responsive service from BMS's knowledgeable team of brokers. This is particularly important as architects experience changes in the regulatory environment in relation to professional liability insurance requirements.

Did you know?

Professional liability insurance (PLI) is already required for architects in practice across much of Canada. In 2017, PLI became mandatory in British Columbia (B.C.). Architects will have to comply with this as of February 1, 2019. Alberta is also expected to follow suit in the near future.

Architects will easily be able to access cost-effective and comprehensive professional liability coverage through the RAIC Insurance Program.

Beyond the insurance purchase, this magazine is just one example of the evidence-based practice risk resources that will be developed by the RAIC and BMS. This data-driven material will help to reduce practice risk by affording members greater insight into current and emerging trends for your profession across Canada.

Ensuring members receive the highest standard of service is also paramount. In 2017, BMS received national recognition, winning the Insurance Business Award for "Outstanding Customer Service by a Brokerage". RAIC members can expect the following:

- 1-3 day turnaround time on quotes
- Free consultation and policy comparison
- Tailored insurance products and competitive pricing
- Dedicated toll-free number and email address to communicate directly with BMS's team of specialist brokers
- BMS to always work with leading insurers that specialize in this segment

What does this mean for me?

This change does not impact any current professional liability or business insurance policy or coverage you have in place. However, we encourage you to contact BMS to discuss your current insurance arrangements in advance of your policy expiry dates. Their specialist team will prepare an obligation-free quote for your existing coverage for your review.

I require Professional Liability Insurance or business insurance for myself or my firm

Please contact BMS at 1-844-294-2714 or email raic.insurance@bmsgroup.com to secure coverage today.

What Coverage Do I need?

A quick guide to deciding what insurance you need – and what you don't.

There are a lot of different insurance products out there and sometimes it's difficult to figure out what coverage you need – and just as importantly, what coverage you don't.

The table below helps to identify the most appropriate coverage(s) for your circumstances. While we've tried to make this table as comprehensive as possible, it provides an outline of common scenarios only and

may not include all possible professional and business structures.

We recommend that you use this table as an initial framework for decision-making. It does not replace individualized broker advice so please speak with an insurance professional at BMS if you have questions about the most appropriate coverage for your specific circumstances.

| Employee | Independent Contractor / Sole Proprietor (no staff) | Architectural Firm |
|--|--|---|
| <p>Consider:</p> <ul style="list-style-type: none"> Professional Liability Insurance (PLI) Cyber Security & Privacy Insurance | <p>Do you have valuable contents?</p> <p>YES – Consider:</p> <ul style="list-style-type: none"> Professional Liability Insurance (PLI) Business Package (with Building Coverage if you own the building where you operate) Cyber Security & Privacy Insurance <p>NO – Consider:</p> <ul style="list-style-type: none"> Professional Liability Insurance (PLI) Commercial General Liability Insurance (CGL) Cyber Security & Privacy Insurance | <p>Do you have other professionals working for or on behalf of your firm?</p> <p>YES, architects only – Consider:</p> <ul style="list-style-type: none"> Professional Liability Insurance (PLI) Business Package (with Building Coverage if you own the building where you operate) Employment Practices Liability Cyber Security & Privacy Insurance <p>YES, architects and other professionals (e.g. interior designer etc.)– Consider:</p> <ul style="list-style-type: none"> All of the above, plus Business/Entity PLI <p>NO, administrative staff only (for instance, receptionist, bookkeeper, etc.) – Consider:</p> <ul style="list-style-type: none"> Professional Liability Insurance (PLI) Business Package (with Building Coverage if you own the building where you operate) Employment Practices Liability Cyber Security & Privacy Insurance |

Types of Insurance

Now that you've identified the recommended coverage, read on to learn more about the different types of insurance:

RAIC Professional Liability Insurance (PLI)

This policy protects you if you are being sued for injury or damages that have resulted from a negligent act, error or omission that has arisen out of your professional capacity as an architect. Your legal defence will be paid for by the insurance company to the limits of your policy – even in circumstances where you are found to be at fault. And if damages, or client compensation, are awarded by the court, your PLI policy covers this too.

Your policy will also offer coverage for legal costs if a complaint is made against you to your provincial or territorial regulatory body.

Business/Entity Professional Liability Insurance

This policy protects you if your firm is named in a statement of claim or lawsuit alleging a negligent act, error or omission. Following an incident, a client's legal counsel will commonly name all individuals involved, including the business or entity as the larger provider of services. Entity PLI policies provide separate limits of liability to protect your business assets in these circumstances.

Architectural firms should consider purchasing this coverage if architects (for example, co-owners, employees, associates) or other professionals are working for or on behalf of your business.

Commercial General Liability Insurance (CGL)

This policy protects you against claims arising from injury or property damage that you (or your business, including your staff) may cause to another person as a result of your operations and/or premises. For example, a client comes into your office for a meeting on a wet day. When walking through the reception, she slips and falls on the wet floor, breaking her arm. The client may look to hold you or your business responsible for her injury. CGL is often referred to as "slip and fall" insurance because this is such a common example of injury to a third party as a result of your premises.

Let's look at the other reason architects buy CGL: to protect against claims of property damage. This applies to both architects working as independent practitioners who contract out their services and to business owners. If you are an independent contractor and accidentally cause damage to the property in which you are working, the property owner may look to hold you responsible for compensating them for the costs of repairs. For instance, you plug something in and a short causes an electrical fire. Your CGL policy would respond in this circumstance.

Because business owners generally have other insurance needs associated with physical office space and its contents, CGL coverage often comes bundled in a package product, the Business Package.

Business Package (with or without Building Coverage)

This policy includes CGL, Property, Crime, and Business Interruption coverage and is designed for business owners and independent contractors with valuable contents.

In addition to the CGL coverage described above, the Business Package includes coverage to protect your business and the contents within from losses associated with property damage (such as fire) and crime. Property Coverage insurance protects against damage to property, including professional equipment, and loss of revenues caused by an interruption of business activities arising from an insured loss. Crime Coverage insurance protects against financial loss due to dishonesty, fraud, or theft of money, securities or other property owned by the business/office.

Architect business owners who own the building in which their office is located can also add Building Coverage to their policy. This insures the bricks and mortar of your property, protecting you against loss or damage from a broad range of causes, including natural disasters and other threats to business operations, such as vandalism.

Cyber Security & Privacy Liability Insurance

This policy protects you if you or your business has been involved in a cyber breach or privacy violation. It will cover the costs of your legal defence, investigative costs, notification and response costs, costs awarded to the client(s) affected by the breach/violation, and more.

Cyber security and privacy liability is one of the fastest growing areas of risk for architects and architectural firms are not immune. Anyone who maintains or transmits client information electronically is vulnerable to a cyber breach. This breach can range from a minor occurrence, such as a colleague accessing information on your computer, to the theft of thousands of client or project records. While some breaches derive from external hackers using phishing scams or ransomware attacks, they can also result from system glitches, or even from simple carelessness or human error.

With consequences ranging from investigation and prosecution at the provincial level, professional regulatory disciplinary action, fines, and lawsuits, a cyber security or privacy violation can have significant impact on your reputation, career and livelihood.

Employment Practices Liability (EPL)

Architect business owners who employ staff and/or engage volunteers, students or contractors will also want to consider EPL insurance. This policy protects you and your business against allegations of employment practice violation, including wrongful termination, discrimination, workplace harassment, and others.

Your decisions about hiring, compensation, promotions, accommodating disabilities, and terminations, for instance, impact the individuals working in your business environment. Any of these decisions could

lead to a claim for a wrongful employment practice even if handled correctly. As an example, following a promotion of one of your reception staff to the position of office manager you are sued by another staff member. Your employee is alleging age discrimination and failure to promote because the office manager position was filled by a younger, less qualified person. Your EPL policy would cover the costs of your legal defence and any compensation paid to the employee who brought the suit forward.

The EPL policy available through the RAIC Insurance Program has been designed with architects and professionals in mind. We understand that business environments vary; with professional staff, non-professional staff, students, volunteers, contractors, and any combination thereof. That's why your EPL policy will protect you, your business, and your employees against allegations made by any of these individuals.

Read more about employment practices liability in the article *"How #MeToo is likely to change the Employment Landscape in Canada; and what coverage to have in place to protect yourself"*.

There you have it. Probably more than you ever wanted to know about insurance coverage for you and your business. For more information or if you have any questions about professional liability and business insurance protection, contact a broker at BMS – we're here to help.





How the #MeToo Movement Could Change the Employment Landscape in Canada;

and what coverage to have in place to protect yourself.

More than 10 years ago, the #MeToo movement was born. It was started by activist Tarana Burke in order to reach sexual assault survivors in underprivileged communities. However, it wasn't until 2017 that the #MeToo movement exploded on Twitter, dominating news headlines worldwide and bringing attention to workplace issues such as harassment, inequality, and discrimination.

While there is a temptation to dismiss these cases as sensationalist and rare, a survey conducted by Employment and Social Development Canada (ESDC) in 2017 suggested that they represent the norm rather than the exception. The survey found that in Canadian workplaces, "60% of survey respondents reported having experienced harassment. 30% of respondents said that they had experienced sexual harassment, 21% had experienced violence and 3% had experienced sexual violence."¹

With such a high number of individuals being victimized in the workplace, it is even more shocking that management of Canadian companies on the whole do not believe that harassment is an issue. In a recent survey of 153 Canadian executives (95% of whom were male) done by The Gandalf Group, 94% of respondents disagreed when asked if sexual harassment was a problem in their business. Confusingly, the survey found that only 5% of responding executives said sexual

harassment was a problem in their own firm, yet 33% said it was a problem in their industry.² It is reasonable to expect that the empowerment experienced through the #MeToo movement will result in more reporting of harassment cases and more reporting means more direct liability for employers.

What does employer liability look like?

A review of a cases heard by the Human Rights Tribunal of Ontario (HRTO) shows that small, private Canadian companies are at risk of substantial liability should they receive an adverse judgement through a tribunal hearing. Similar to other provincial human rights agencies, the HRTO offers an accessible process for anyone who believes they have experienced discrimination or harassment and who is seeking a resolution. Using mediation or a hearing, the HRTO resolves claims brought under the Human Rights Code and issues decisions that may include monetary compensation to the victim for (i) past and future wage losses, (ii) loss of benefits and other employee entitlement, and (iii) injury to dignity, feelings and self-respect. Non-monetary remedies can include training and orders to develop human rights policies, for example. According to a recent Globe and Mail article, victims of sexual assault and harassment in the workplace are winning higher awards than ever before from human rights tribunals, particularly with respect to

damages for injury to dignity, feelings and self-respect. In one case, an employer was ordered to pay over \$200,000 plus \$50,000 in interest to a former retail employee when the tribunal found him guilty of ongoing and repeated sexual assaults.³

Other recent human-rights tribunal awards across Canada include the following:

- \$75,000 awarded to a 15 year old girl who was subjected to sexual harassment from her employer (a tattoo parlour) for injury to dignity, feelings and self-respect.⁴
- \$140,000 in lost wages and as compensation for injury to dignity, feelings and self-respect awarded to three women who worked as receptionists at a hair salon until ongoing sexual harassment left them unable to continue.⁵
- \$25,000 in damages for loss of dignity plus lost wages awarded to an employee when she was terminated due to her pregnancy.⁶

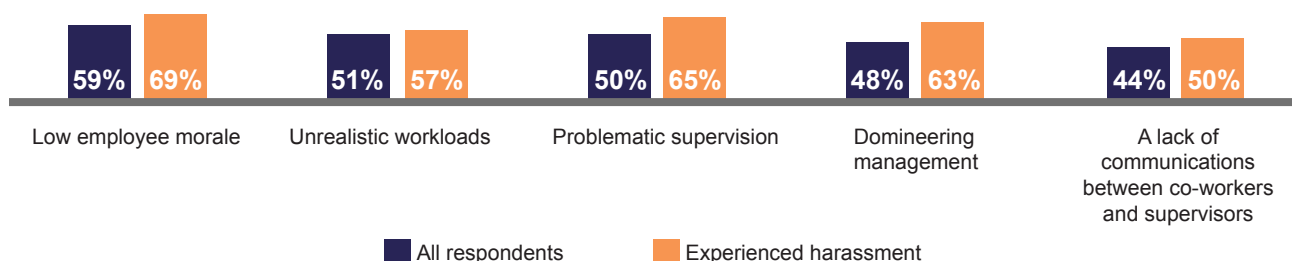
- \$18,000 awarded to a woman who endured months of insults and slurs, touching upon both her Black and Indigenous ancestries.⁷

What can you do to protect yourself?

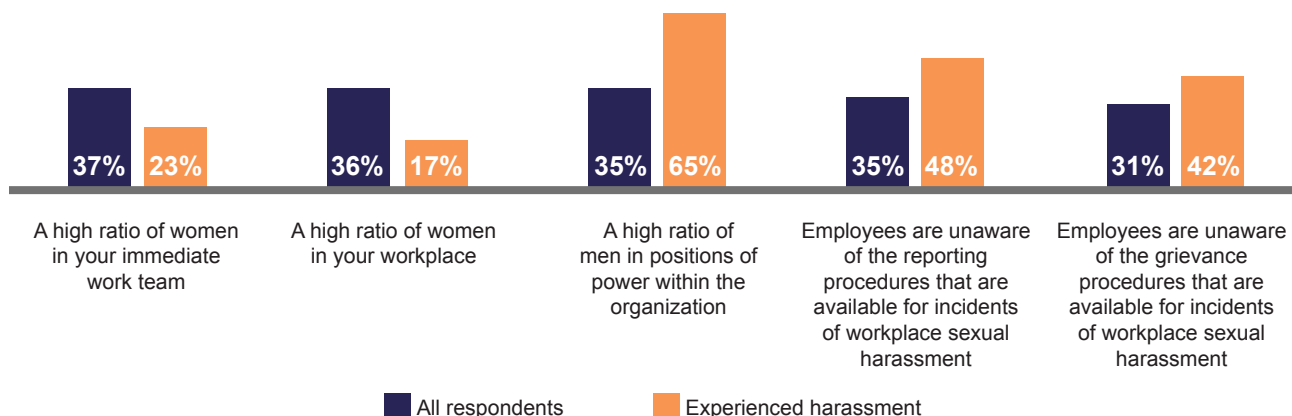
Research suggests that there are particular risks that can contribute to the occurrence of harassment and specifically, sexual harassment in the workplace. Recognizing these risks is an important first step to proactively managing your exposure. You should ask yourself; does my company have any of these risks factors?

Even if you do not have direct exposure to one or more of these risks factors, the threat of adverse behaviours occurring within your organization (big or small) is real. Recall that 60% of respondents to the 2017 Statistics Canada survey (drawn from numerous industries, across employers of all sizes) experienced harassment within the workplace.

Top five risk factors for harassment¹



Top five risk factors for sexual harassment¹



Charts adapted from ESDC (2017)¹.

Is there insurance for this risk?

Yes there is and it's called Employment Practices Liability (EPL) Insurance. This specialized insurance is designed to provide architect employers a way to protect themselves in an increasingly litigious workplace.

Architect business owners who employ staff and/or engage volunteers, students or contractors will want to consider EPL insurance. This policy protects you and your business against allegations of employment practice violation, including wrongful termination, discrimination, and workplace harassment, such as described above.

What does EPL cover?

EPL insurance is the coverage architect business owners can rely on if a claim is made against you, your business, or your employees to the human rights tribunals, in civil court, or to a regulatory body, alleging workplace harassment such as we are seeing with the #MeToo movement. But beyond this, EPL insurance also provides coverage for a wide variety of other employment-related activities.

Your policy will cover:

- Legal costs to defend against Employment Practices Wrongful Acts, including:
 - Retaliation
 - Discrimination
 - Employee harassment, including sexual harassment, bullying and hostile work environment
 - Wrongful termination
 - Failure to employ or promote
 - Breach of employment contract
- Legal costs to defend against employment-related allegations of:
 - Deprivation of a career opportunity
 - Defamation
 - Negligent evaluation
 - Wrongful discipline
 - Misrepresentation
- Legal costs to defend against claims from independent contractors alleging breach of contract, loss of revenue, or loss of commissions;
- Any monetary damages, judgements, or settlements you are required to pay as a result of a covered claim.

Whether you employ two, twenty or even more staff, you may want to seriously consider adding EPL insurance coverage to protect your line of business and yourself

as a business owner. Recent events, the increasingly litigious environment and more frequent use of social media platforms all position this to continue to be a topic that employers won't be able to completely avoid, even if there is no intentional wrongdoing.

There are a range of limit options available to RAIC members and coverage is tailored specifically to meet the needs of employers, including the architect owners of offices of all sizes.

Contact a BMS broker today to discuss your individual circumstances or to apply for coverage. You can also find out more online at www.raic.org.

RAIC Liability Insurance Program

The RAIC Insurance Program is available to members of the Royal Architectural Institute of Canada (RAIC)*. The RAIC Insurance Program officially launches October 1, 2018; and members can purchase coverage any time from that date. You can also contact BMS prior to October 1 to obtain more information and a no-obligation quote.

If you have questions about which coverage is best for you, please call a dedicated BMS representative at 1-844-294-2714, or email us at raic.insurance@bmsgroup.com.

Do you have expertise to contribute? If you wish to have your architect-related risk or liability article published in RISKinsight, please contact BMS at raic.insurance@bmsgroup.com



If you have **data**, you have **risk**

Is Your Business Cyber Secure? And what is your planned response if you are to have a cyber or privacy breach?

The implications of a cyber security or privacy breach are often underestimated or not completely understood. Therefore many organizations may have little or no planned procedure in place to address a breach of cyber security and/or breach of confidential information. This could have a significant impact if not adequately covered and appropriately managed.

Imagine this - your firm launches a new website allowing users to access their projects, schedule meetings and appointments, and monitor progress. Two months after the website is launched, it is compromised by a hacker who disables your network. It takes a week for staff to bring the website back online, taking away key resources from the business and impacting several projects.

Or what about this scenario - you put the finishing touches on a set of 3D CAD drawings for a new academic building at a local university. Your firm sends out an email thanking everyone for their time on the project and announcing that the job was almost ready to deliver to the project owner. Later that night, a disgruntled IT administrator accesses and destroys the CAD files, destroying months' worth of hard work and putting the firm in danger of losing its contract with the university.¹

These are just two examples of how you and your firm could be significantly impacted by a cyber security or privacy breach.

Viruses, Malware, Ransomware and Phishing are also common cyber threats that small and medium-sized businesses (SMBs) face. These risks are constantly evolving and are becoming more frequent. StaySafeOnline, an initiative of the National Cyber Security Alliance, states that in Canada "SMBs account

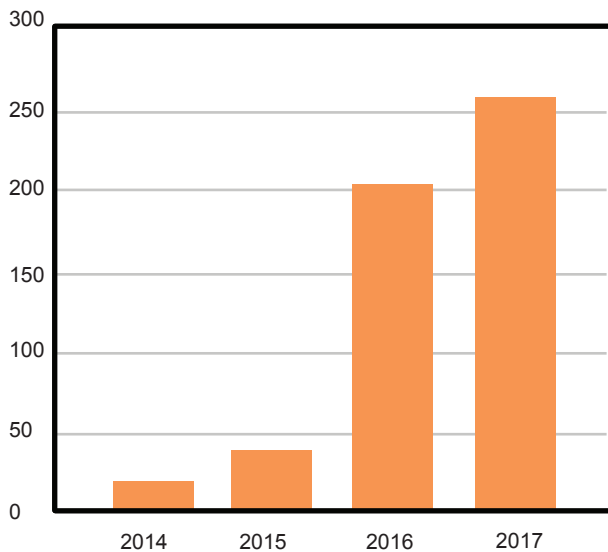
for over 70 percent of data breaches."² According to Beazley plc (Beazley), a leading provider of data breach response insurance, medium sized businesses are also becoming a more common target for cyber criminals. Beazley also highlights that "...businesses also cannot ignore the all too prevalent accidental disclosures and human error risks."³

While many of us believe privacy breaches only stem from sophisticated attacks by elusive hackers, simply misplacing or losing documents or sending an email with sensitive information to the wrong person is considered a breach as well. From November 1, 2018 it will become mandatory across Canada to notify of certain privacy breaches. Businesses subject to the Personal Information Protection and Electronic Documents Act (PIPEDA) will have to do this as soon as feasible following a breach and can face regulatory fines of up to \$100,000 if they don't comply.

Ransomware also continues to be one of the largest threats to small and medium-sized businesses. The Beazley Breach Response team defines Ransomware as, "A type of malware used in cyber extortion that encrypts data on an endpoint or network so that the data is unusable unless the victim pays a ransom for the decryption key."

Another commonly used tactic is Email Phishing. This is carried out via email, where someone is encouraged to click on a link or proceed to provide information that subsequently downloads a virus. The emails are made to look like they're coming from the person's employer and can be hard to differentiate from authentic correspondence. Some tips to protecting your organization against Email Phishing:

The rise of ransomware



Source: BBR Services 2017

- Establish clear procedures for how any legitimate request for financial information or fund transfer will be handled, and train relevant employees annually on the procedures. If possible, establish a policy that no requests for transfer of funds will be made or responded to by email.
- Train all employees, especially those with employee payroll or benefits information, to beware of phishing attempts.
- Configure your email system to highlight emails coming from outside the network. Phishing emails are often masked to look like they are from within the company.

Cyber attacks and privacy breaches can be costly, particularly for small and medium sized businesses. They can occur quickly and when you least expect.

The Canadian Government's "Get Cyber Safe" has a range of general tips for businesses to help mitigate the risk of a cyber attack, including:

- Educate employees to not click on pop-ups when on the internet and encourage caution when opening certain emails containing links or inconsistent branding.
- Keep software and operating systems up-to-date
- Regularly back up important data
- Encrypt computers, laptops and USBs
- Appoint an administrator and ensure the main password is changed regularly and only known to that employee

For more information, videos and additional resources to

share with staff, visit the Get Cyber Safe website www.getcybersafe.gc.ca.⁴

Additionally, and even after implementing multiple measures to protect your business, cyber attacks can still occur. As a RAIC member, you have access to Cyber Security & Privacy Liability Insurance coverage.

What protection does this offer?

The Cyber Security & Privacy Liability policy is designed to help architects manage the risk of holding increasingly large quantities of information about clients, employees, and others.

This policy includes coverage for the following:

- Payment of damages to a third party, including coverage for your legal expenses;
- Costs associated with investigation into the cause of the breach;
- Costs involved to notify individuals affected by the breach;
- Coverage for regulatory defence costs and penalties resulting from a violation of a Privacy Law;
- Coverage for ransomware and more.

For more information or if you have any questions about Cyber Security & Privacy Liability Insurance, contact a broker at BMS Group on 1-844-294-2717 or email raic.insurance@bmsgroup.com

Endnotes

From *How #MeToo is likely to change the employment landscape in Canada; and what coverage to have in place to protect yourself*

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5 J.D. v. The Ultimate Cut Unisex, 2014 HRT0 956

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7 Ross v. 4888970 Manitoba Ltd. o/a Gillam Motor Inn and Michael Blahy - January 2018

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