



**Response to Discussion Paper on  
Privilege and Whistle-Blower Protection**

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Submitted to:

Canadian Council of Insurance Regulators

Submitted by:

The RIMS Canada Council  
A Standing Committee of the  
Risk and Insurance Management Society, Inc.

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## **Background/Introduction**

As representatives of Canada's largest group of commercial insurance purchasers, the RIMS Canada Council (RCC) appreciates the opportunity to express the views of its members to the Canadian Council of Insurance Regulators (CCIR) on its Discussion Paper on Privilege and Whistle-Blower Protection.

The Risk and Insurance Management Society, Inc. (RIMS) is a not-for-profit organization dedicated to advancing the practice of risk management, a professional discipline that protects physical, financial and human resources. Founded in 1950, RIMS represents over 3,800 industrial, service, nonprofit, charitable, and governmental entities. The Society serves 9,400 risk management professionals around the world.

RIMS has over 800 individual members in Canada, representing more than 425 of Canada's largest companies and organizations in many industries, including financial institutions, retail, consumer products and services, energy and utilities, agriculture, transportation, real estate, educational institutions, and municipal and provincial governments.

The RCC is a standing committee of RIMS that addresses Canadian activities and strategic initiatives of RIMS and risk management in Canada. The RCC is comprised of representatives from each of the ten RIMS chapters from across Canada. The RCC's Communications and External Affairs subcommittee also includes representatives from across Canada.

## **Opening Remarks**

The RCC supports the initiatives the privilege and whistle blower protection concepts outlined in the discussion paper and their intended purpose of promoting good governance and consumer protection.

It is assumed that all the information provided in the discussion paper is correct and has been presented in a balanced manner. It is also assumed that the implementation of risk-based regulation, privilege and whistle blower protection as described can be achieved efficiently without significant cost impacts to the operation of insurance companies, insurance sales intermediaries or insurance consumers.

## **Privilege**

RCC supports good governance practices within the insurance industry. In general, RCC considers the concept of risk-based regulation to focus resources and regulatory supervision on higher-risk companies, to be reasonable and practical. A variety of criteria based on information provided by the companies, such as current reporting requirements, mandatory and voluntary self-assessments, and information from consumers and from other sources might be used to determine the relative risk of companies and their various business units. Other criteria such as product type, consumer profile, business volume metrics, geographic factors and past performance might also be considered.

Used internally, self-assessment tools and processes are a recognized means of supporting good governance, regulatory compliance and best practices. If shared openly with the regulator, these reports should provide valuable information to determine the risk of non-compliance with regulation. Self-assessment information may also help regulators determine how to best provide supervision and support in achieving compliance and reducing risk levels.

Recognizing that privilege protecting against the use of self-assessment information in civil litigation will promote more meaningful and increased use of both mandatory and voluntary self-assessment tools, the RCC supports the limited privilege outlined in the discussion paper in spirit.

The model wording appears to provide the intended privilege to a wide range of potential documents generated through self-assessment. However, the wording may be interpreted to be broader than intended. This might be addressed by outlining the types of documents and information *not* intended to be extended privilege protection, such as raw data, operational documents and strategic documents that may be used or reviewed in completing the self-assessment.

The privilege must be structured to facilitate governance and compliance without providing insulation for documents currently available that might be used or reviewed for self-assessment or to provide an unfair advantage in litigation that goes beyond the intended purpose, which may be a risk. For instance, companies could change current practices in title, or restructure functions and/or document production protocols in an attempt to expand the privilege protection to documents that are not bona-fide self-assessment tools or information. Recognizing a law court authority may have the task of determining if the privilege should or should not attach to a particular document, the wording should provide some guidance as to what type of document the privilege explicitly excludes. It should also be noted in the wording that for some documents the intended privilege might only attach to a portion of the document.

## **Whistle-Blower Protection**

The RCC supports the whistle blower protection outlined in the discussion paper.

With respect to section 4.4 the RCC supports privilege for the communication provided to the regulator by the whistle-blower for the express purpose of protecting the identity of the whistle-blower, where appropriate. The RCC recognizes that such a privilege may have limitations such that in special circumstances the regulator may be in a position where such communications, or portions of them, are required to be disclosed. In such cases, the immunity for the whistler-blower ought not to be compromised.