

THE 5 P'S OF CREATING A CRISIS MANAGEMENT PLAN

by Jack Quinn, Suzanne Folsom and Robert Garretson

In today's dynamic business environment, one of the few certainties is that organizations of all types and sizes are likely to confront an enterprise-defining crisis at some point. Despite the high probability of this occurrence, such an incident will still come as a shock for some.

A crisis is generally defined as a critical event or point of decision that, if not handled in an appropriate and timely manner, can turn into a catastrophe with the potential to harm people or property, seriously interrupt or completely halt business operations, damage an organization's reputation with stakeholders, adversely affect overall enterprise value, spark employee departures, and/or create new opportunities for competitors.

Accepting the reality that a crisis will occur and rejecting the oft-repeated "we'll handle it when it happens" or "there's nothing we can do now since we don't know enough" is the critical first step in constructing a durable strategic crisis preparation and response protocol.

Organizations that use "peacetime" wisely will be much better positioned to curtail the severity and duration when a threat does materialize. A battle-tested framework for effective crisis preparation and response includes:

Planning and preparation: At the outset, developing a written crisis plan requires a candid assessment—best led by independent experts—of the organization's vulnerabilities. This analysis should consider all possible scenarios, from those perceived as likely to so-called "black swans." The process to identify these risks includes interviews with the organization's executives and operations-level leaders, review of its past crises (and how they were handled) along with peer or industry incidents, and open source research such as sell-side analyst reports, relevant federal and state regulatory filings, and macro-industry analysis.

Next, develop tiered and prioritized threat classifications outlining the ideal response approach and the follow-on tactical implementation appropriate for each tier. This should incorporate agreed-upon criteria



including objective metrics such as the number of customers or external parties involved, potential financial impact, feedback/input from regulators, expected duration, and relation to other current high-profile issues. The resulting escalation and de-escalation matrix can accommodate the real-life situations in which most crises occur, especially by incorporating new information that changes the dynamics.

The organization's response should be similarly flexible. Preparing materials mapped to each vulnerability discovered above is also essential. Done outside of the pressure of an evolving crisis, drafting everything from holding statements to deeply researched FAQs to potential social media communications will enable the organization to customize and, as needed, issue these communications quickly.

People: A small group of senior executives designated as the organization's incident management team will provide the oversight and speed

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D&O 2020: A Glimpse at Some Issues Ahead

by Carolena Gordon

As 2019 draws to a close, it is tempting to look back and reflect on the events of the year, but it is equally important to look ahead. Disruption is all around us. Everything from our politics to technology to the weather is riddled with disruptive forces that challenge our perspective, our systems and our ability to predict the future.

D&O liability is no exception. Our courts and our legislators are grappling with increasingly uncharted territory in certain emerging areas and we struggle to fit morphing issues into our existing legal structures. Looking ahead, there is lots to keep our eye on while we ready ourselves for the arrival of the New Year.

Cyber and privacy breaches are among the leading growth areas for claims against corporations and their boards in Canada. While standalone cyber insurance is becoming increasingly common, D & O policies are among the first looked to in the event of a breach. Alleged failures by the board to properly ensure that systems are in place to maintain privacy and data security will become increasingly common in the years to come.

Environmental exposures for directors and officers personally for remediation costs in the case of environmental contamination is a reality and will continue to be one. Orders have been issued personally against former officers and directors of a bankrupt company to fund ongoing remediation. The January 2019 Supreme Court of Canada decision in Redwater could have far-reaching implications. It held that energy companies must fulfill environmental obligations before paying back creditors in the

case of insolvency. Directors and officers may face claims of preferential treatment in agreeing to pay creditors in advance of clean-up costs. Public interest coalitions are exploring the use of class actions against fossil fuel companies and governments in connection with climate change issues.

High profile cases in the United States have given rise to the MeToo movement and an increasing awareness of potential claims against senior executives for failure to provide a harassment-free work environment. This can manifest itself in the form of derivative suits as well as individual claims and potentially class actions. Legislators are beginning to insist that companies have harassment prevention policies.

Non-medical cannabis became decriminalized across Canada on 17 October 2018. The size of the potential market is estimated at greater than \$4 billion. There is significant volatility in this market and regulatory uncertainty continues to affect the production and the marketing of cannabis products. Several securities claims are already underway (Cronos, Aphria, CannTrust, CV Sciences and Medmen).

All of these issues developing in D&O liability have several themes in common. They have developed at lightning speed, fueled by social responsibility movements and, in some instances, social media. They all represent, for different reasons, unique challenges to our legal system or our insurance industry or both. We should be mindful of both their volatility and the impact they may have on the liability of directors and officers in the year to come. ■

Carolena Gordon is a partner at Clyde & Co LLP.

A&D 2020: aperçu des défis qui nous attendent

par Carolena Gordon

Voilà que 2019 tire à sa fin; bien qu'il soit tentant de regarder derrière nous pour réfléchir aux événements de la dernière année, il est tout aussi important de regarder droit devant. Les bouleversements sont partout autour de nous. Tout, allant de la politique à la technologie, en passant par la météo, est secoué

par des forces perturbatrices qui remettent en question nos façons de voir les choses, nos systèmes et notre aptitude à prédire l'avenir.

L'assurance responsabilité civile des administrateurs et des dirigeants (A&D) ne fait pas exception. Nos tribunaux et nos législateurs s'avancent de plus en plus sur des territoires non cartographiés en

lien avec des secteurs émergents, et nous nous efforçons de faire concorder des enjeux aux formes nouvelles avec nos structures législatives actuelles. Alors que nous sommes occupés à nous préparer à l'arrivée du Nouvel An, le regard tourné vers l'avant, nous constatons que plusieurs éléments méritent notre attention.

Au Canada, les atteintes cybers et les atteintes à la vie privée font partie des principaux secteurs en expansion en ce qui concerne les poursuites contre des entreprises et leur conseil d'administration. Tandis que les cyber assurances distinctes deviennent de plus en plus communes, les polices A&D sont parmi les premières à

être étudiées en cas d'atteinte.

Dans les années à venir, le défaut allégué du conseil d'administration à s'assurer que les systèmes en place permettent de protéger la vie privée et la sécurité des données deviendra une accusation de plus en plus courante.

Du côté de l'environnement, c'est devenu un fait : les administrateurs et dirigeants s'exposent personnellement à devoir assumer les coûts d'assainissement dans les cas de contamination environnementale, et cette réalité est là pour rester. Des ordonnances ont été émises contre d'anciens administrateurs et dirigeants d'une compagnie en faillite afin qu'ils financent des assainissements en cours. La décision de la Cour suprême du Canada concernant l'affaire Redwater datant de janvier 2019 pourrait

avoir des conséquences considérables. Il y est statué qu'en cas d'insolvabilité, les entreprises énergétiques doivent remplir leurs obligations environnementales avant de payer leurs créanciers. Les administrateurs et dirigeants s'exposent à des poursuites pour traitement préférentiel s'ils consentent à payer les créanciers avant de défrayer les coûts de nettoyage. Certains groupes de pression publics envisagent actuellement d'intenter des recours collectifs contre des entreprises de combustibles fossiles et contre les gouvernements en lien avec les enjeux rattachés aux changements climatiques.

Des affaires très médiatisées aux États-Unis ont donné naissance au mouvement MeToo et à une prise de conscience par rapport aux possibilités de poursuites

contre de hauts dirigeants qui auraient manqué à leur devoir de fournir des environnements de travail exempts de harcèlement. Ces poursuites peuvent prendre la forme d'actions obliques, de réclamations individuelles et potentiellement de recours collectifs. Les législateurs commencent à insister sur le fait que les compagnies doivent se doter de politiques de prévention du harcèlement.

Au Canada, le cannabis à usage récréatif a été décriminalisé à compter du 17 octobre 2018. La valeur potentielle de ce marché est estimée à plus de 4 milliards de dollars. Ce marché fait face à une volatilité importante, et des incertitudes réglementaires continuent d'affecter la production ainsi que la mise en marché des produits du cannabis. Plusieurs réclamations relatives aux valeurs

mobilières sont déjà en cours (Cronos, Aphria, CannTrust, CV Sciences et Medmen).

Tous ces enjeux en lien avec la responsabilité des administrateurs et des dirigeants ont plusieurs points en commun : ils se sont développés à vitesse grand V, alimentés par les mouvements de responsabilité sociale et, dans certains cas, par les médias sociaux. Ils représentent tous, pour différentes raisons, des défis uniques pour notre système juridique, pour l'industrie de l'assurance, voire pour les deux à la fois. Au cours de l'année à venir, il nous faudra rester attentifs tant à leur volatilité qu'à l'impact qu'ils pourraient avoir sur la responsabilité des administrateurs et des dirigeants. ■

Carolena Gordon est une associée de Clyde & Co LLP.

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necessary in a crisis. Given the enterprise-wide scope of a potential crisis and the need to draw on a wide breadth of internal and external resources to manage it, the general counsel or the chief risk officer often leads this team on a day-to-day basis. The CEO and, when appropriate, the board of directors ultimately have the final say. The incident management team should comprise a range of members of the organization's senior ranks representing each of its major stakeholders, from investors to employees to the media. Every team member should also have a backup.

Additionally, it is useful to identify a series of subject matter experts to advise the team. For example, in the event of a data breach, outside technology, forensic and potentially legal expertise would be immediately available. It is also important to institute a tested system for internally reporting a potential crisis to the designated crisis responders, as well as a clear pathway for communications and direction from the team to be transmitted and implemented across the organization.

Practice: Organizations are best served when they "pressure test" the crisis plan and protocols through the implementation of crisis response drills or table top exercises that simulate the pace, multiplicity of issues, and potential landmines that require deft navigation. Conducted by outside counselors (who alone know the full parameters and extent of the exercise), the results can be illuminating and provide the foundation for

briefings to management and members of the board of directors. It can also be helpful to validate the details and implications of this exercise with a designated member of the crisis team (often the general counsel).

Post-Event Evaluation and Review: Whether a real or simulated crisis, the organization must incorporate lessons learned from any incident and address all demonstrated gaps in the crisis plan. Driving this information into the continuous improvement of the process, planning, and materials will enhance organizational preparation to successfully overcome future challenges.

Time is the enemy for any organization in crisis. As response windows continue to shrink, organizations and their leaders are newly empowered through the creation of advanced planning and preparation capabilities to help them thoughtfully protect their people, assets, brands and even their personal reputations. Brands that perform well in trying times can minimize the negative impact, speed their reputational recovery, and stand out from competitors who may not have been as well prepared. ■

This article was previously published in the December 2019 issue of Risk Management magazine.

Jack Quinn is a partner and chair of the investigations, compliance and strategic response practice at Manatt, Phelps & Phillips. **Suzanne Folsom** is a partner and co-chair of the investigations, compliance and strategic response practice at Manatt, Phelps & Phillips. **Robert Garretson** is a managing director in the investigations, compliance and strategic response practice at Manatt, Phelps & Phillips.

ORIMS to Celebrate its 60th Anniversary



O RIMS will be celebrating its 60th Anniversary in 2020. We have an action-packed year to celebrate this momentous occasion.

A main initiative for ORIMS over the last 60 years has been a focus on education. As part of the anniversary celebrations, we want to encourage as many of our members as possible to write the RIMS-CRMP exam.

ORIMS has arranged to sponsor two-day sessions focused on preparing at least 60 members for the exam in 2020. The course will be instructed by Nowell Seaman, past president of RIMS and past Don Stuart Award recipient. In addition to the knowledge learned in the course, a reduced 2020 exam fee will be extended to those who attend. ORIMS will

be covering the cost of the speaker, course fees, and lunch.

The sessions will be held at the learning centre at the offices of McCague Borlack in Toronto on the following dates:

- **March 23 & 24, 2020 – 8:30 am to 4 pm**
- **March 25 & 26, 2020 – 8:30 am to 4 pm**

You must be a RIMS member as well as an ORIMS Chapter member to be eligible for these

sessions. If you are not currently a member of both and would like to sign up, please see our membership page (<https://www.ontariorims.org/membership/>) to complete your registration.

You will be asked to pay \$100 refundable fee for signing up (refundable upon course completion) as well as you must pay the prearranged 2020 exam fee as part of the registration package. For more information, please visit: <https://www.ontariorims.org/crmp-prep>

Watch for registration to open soon so you can be part of this great initiative to celebrate 60 years of ORIMS!

In addition to all of our professional development sessions and social events, ORIMS will be hosting a 60th Anniversary Gala on April 23. Stay tuned for further details as the date approaches. ■



CONGRATULATIONS

The following Canadians have earned their RIMS-Certified Risk Management Professional (RIMS-CRMP) certification. Well done!

For more information on the RIMS-CRMP visit www.RIMS.org/Certification.

Marty Bray
Felix Cheng
Darius Delon
Ginette Demers
Michelle Drew
Valerie Fox
Emmanuel Giry
Jack Gordon

Shant Jain
Akinyemi John
Shelley Kilbride
Sonia Kundi
Peter Leland
Jan Mattingly
Sandra Mayo
Charles McCabe

Mazlina Navarre
Obed Ndlovu
Christine Petch
Jarrold Roy
Nowell Seaman
Loreen Sherman
Richard Stewart
Quoc Phu Truong

Know Risk? Show It.



Earn Your RIMS-CRMP Certification

Whether you're just starting out or on the rise, the RIMS-CRMP is a smart choice for your career. The exam covers five major areas that all risk professionals, no matter what your specialty, need to know. Earn your RIMS-CRMP to establish yourself as a strategic thinker and continuous learner who can navigate the risk environment of today and tomorrow.

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** Prep courses are not a mandatory requirement for the RIMS-CRMP examination. Participation does not guarantee a passing score on the RIMS-CRMP exam.*

Learn more and apply at
www.RIMS.org/Certification.



LEADING BY EXAMPLE: Jim Swanson Honored with 2019 Donald M. Stuart Award

At this year's RIMS Canada Conference, the RIMS Ontario Chapter (ORIMS) presented the Donald M. Stuart Award to **Jim Swanson**, director of insurance and risk management for the Province of Manitoba (retired). The Donald M. Stuart award is widely recognized as Canada's highest honour within the risk management field. Since 1979, the annual award has celebrated Canadians who have made outstanding contributions to the risk management profession.

"Throughout my career, I have focused on being a strong communicator, embracing varying perspectives and ideas, and promoting the invaluable potential of a collaborative, enterprise-wide approach to risk management," Swanson said. "As a volunteer and an educator, I continue to be amazed by the new strategies implemented by my fellow professionals and am so proud to be a part of this outstanding business community. I can't express enough how honoured I am to be this year's Donald M. Stuart Award recipient."

During his 30 years with the Province of Manitoba, Swanson played a critical role in the development of insurance and risk management policies for its 12 departments and 39 agencies. His contributions led to the development and implementation of enterprise risk management practices, as well as the creation of an adaptable business continuity plan and fraud reporting and prevention policy. Additionally, during his tenure, he built one of the most comprehensive centralized records of physical assets held by any provincial government in Canada.

"In addition to his remarkable achievements with the Province, Jim Swanson continues to generously donate his time and experiences to help advance the profession," said ORIMS President Valerie Fox. "Jim is a tremendous RIMS Canada Council volunteer, a mentor to so many up-and-coming risk professionals and a role model for us all. The RIMS Ontario Chapter is proud to recognize his career."

Swanson is an active member of RIMS. He has held several positions on the RIMS Manitoba Chapter Board of Directors including serving as



the chapter's president from 1992 to 1994. He was a member of RIMS Canada Council's advisory committees and chaired the RIMS Canada Conference in 1994, 2004 and 2014. Swanson successfully incorporated risk management into the Red River College certificate program and was a part of the National Education Committee, a group responsible for updating risk management textbooks and course curriculums. He is also a Canadian Risk Management designation (CRM) instructor and holds the FCIP, CRM and RF risk management and insurance designations. ■

FRED H. BOSSONS AWARD

Also presented at RIMS Canada Conference was the Fred H. Bossons Award. Each year, the award honours the risk management professional who earns the highest average mark on the three examinations required to attain the Canadian Risk Management (CRM) designation. This year's winner was **Ronnie Yuen**, underwriting assistant at Starr Technical Risks Canada Inc.

The CRM designation provides risk professionals a foundation of knowledge and skills needed to identify, assess, monitor and limit risks. The award is recognized by RIMS and awarded by the Global Risk Management Institute (GRMI).

A Message from RCC Chair Tina Gardiner

As we run joyously and busily towards the end of 2019, I want to share some news, thank a lot of people, get ready for the holiday season and beyond, all with a wave of kindness.

News first! The position of Chair of the RIMS Canada Council (RCC) is normally a two-year commitment, however, I will be stepping down after only one year in order to accept a RIMS Board position. While I am humbled and excited to accept this new challenge, it is bitter-sweet to leave behind what I just started with the current RCC. Ginette Demers of QRIMA, who has been serving as RCC Vice Chair, will be Chair as of Jan. 1, 2020. We have been working closely together all year as we developed a long-range vision and plan for the RCC, so she is more than ready to jump in. The volunteers that make up the RCC give of their time generously to ensure all Canadian members have a unique voice in the larger RIMS organization and that our distinct Canadian needs are met.

The RCC is an awesome group of individuals that I have a deep respect for and appreciate so very much. Thank you for all you do and the support you have given me in 2019. I will stay involved for part of 2020 to assist with the transition and will never be more than a call or email away.

One of our most notable accomplishments each year is the RIMS Canada Conference. The 2019 edition from all accounts was spectacular! Edmonton “dressed to the nines” for all of us and the Conference Committee lead by Christine Maligec and Nicole Cebuliak did a fantastic job increasing the expectations of this show for years to come. Their attention to

detail and out-of-the-box thinking challenged all attendees, presented surprises around every corner and disrupted our conference world for the better. Thanks to the NARIMS chapter for hosting and to the Conference Committee for all you accomplished—and happy 40th anniversary to NARIMS.

The CEA Committee is a group of dedicated volunteers that monitors legislation, produces this newsletter and keeps us all informed via our website. Thanks to all for their dedication and hard work. Ben McAllister has completed a very successful and long tenure in his leadership role as Chair of this committee and he will be missed. It is his vision that has been the rudder of this committee for many years and that vision will continue. Thanks Ben!

The NCC Committee has been chaired this year by Bill Baker, who was assisted by Vice Chair Jacqueline Toering and several other committee members. Conference oversight is this group's mandate and it is a very large and crucial task that includes the current year's work and planning for several years into the future. Bill will be passing the reins to Jacqueline as he steps into the RCC Treasurer role in 2020. Thanks to all!

Our current Treasurer, Stephane Cossette, is taking a well-deserved break from the RCC. His passion, thoughtfulness and attention to detail will be missed. Thanks Stephane!

I recently saw a meme that defined diversity



and inclusion in a way that held clear meaning for me and seems like a good message for the holiday season:

Accessibility is being able to get in the building. Diversity is getting invited to the table. Inclusion is having a voice at the table. Belonging is having your voice heard at the table.

Much is being done in our industry about diversity and inclusion. Companies are creating vision statements, training staff, and hosting conferences, seminars and celebrations of successes. In late 2018, the RIMS Diversity & Inclusion Task Force developed the following vision statement:

RIMS strives to provide a highly inclusive environment for all identity groups to thrive in the global risk community, and to facilitate and encourage open dialogue for a more inclusive and resilient future.

Additionally, the Task Force was integral in developing webinars, conference programming, networking opportunities, surveys and

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A MESSAGE FROM RCC CHAIR TINA GARDINER*(continued from page 7)*

establishing important relationships with industry partners who shared similar D&I objectives. RIMS now has a D&I Committee to bring this vision to life.

Honesty, equality, kindness, compassion, treating people the way you want to be treated and helping those in need—isn't that how all of our mothers wanted us to be? Would the world not be a wonderful place if we were all like that? Sure, I may be wearing rose-coloured glasses but why is it so difficult for us to be kind to one another? With the holiday season approaching, this is a time of goodwill and peace. Perhaps we can all include kindness and compassion in our New Year's resolutions. Look for goodness in others and give goodness back. It makes people happy when they are treated with kindness and a smile. Think about how many happy people will be in our lives when we treat everyone with kindness. Our world will become a brighter, lighter place to live.

Kindness creates connection and makes people feel cared about, makes them feel important and no that matter how small the kindness, it is never wasted.

-Aesop

Be kind to one another for no other reason than to be kind. When you do something nice, your body

releases endorphins, so you feel good too! Have a contest with yourself and see how many people you can make smile each day.

In order to be kind, you need to notice what is going on around you. You have to pay attention to find opportunities to insert your own brand of kindness and caring. And the ripples of kindness are truly endless. Kindness is good for the soul and dwells in our hearts. Kindness begets more kindness! Let's all be part of the movement—a wave of kindness!

The bonus of a kindness movement is what children will learn from our example. Showing kindness to friends, acquaintances and strangers increases the chance that they will be kind as well. Often, we treat children with kindness but can have a short fuse with strangers, bad drivers, pushy shoppers, or others outside of our family circle and often we demonstrate this attitude in front of children. This “us and them” thinking can devalue others. Kindness breeds tolerance and understanding and hopefully a gentler, more accepting world. And doesn't that really set the stage for diversity and inclusion?

We as the RIMS Canada Council need to answer the call and get involved. 2020 will be the year we up our game in the D&I area. Please let us know if you want to get involved—volunteers are welcome!

As we enter into 2020, I wish for you and yours health, happiness and prosperity but mostly, I wish you KINDNESS.

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Editorial Committee**Aaron S. Lukoni**

British Columbia Government
Tel: (250) 507-6043

Seamus Gearin

RIMS Canada Consultant
(Becker Associates)
Tel: (416) 538-1650

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