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symposium

Crisis Management: Principles, Strategies and Practices

Litigation & Dispute Resolution

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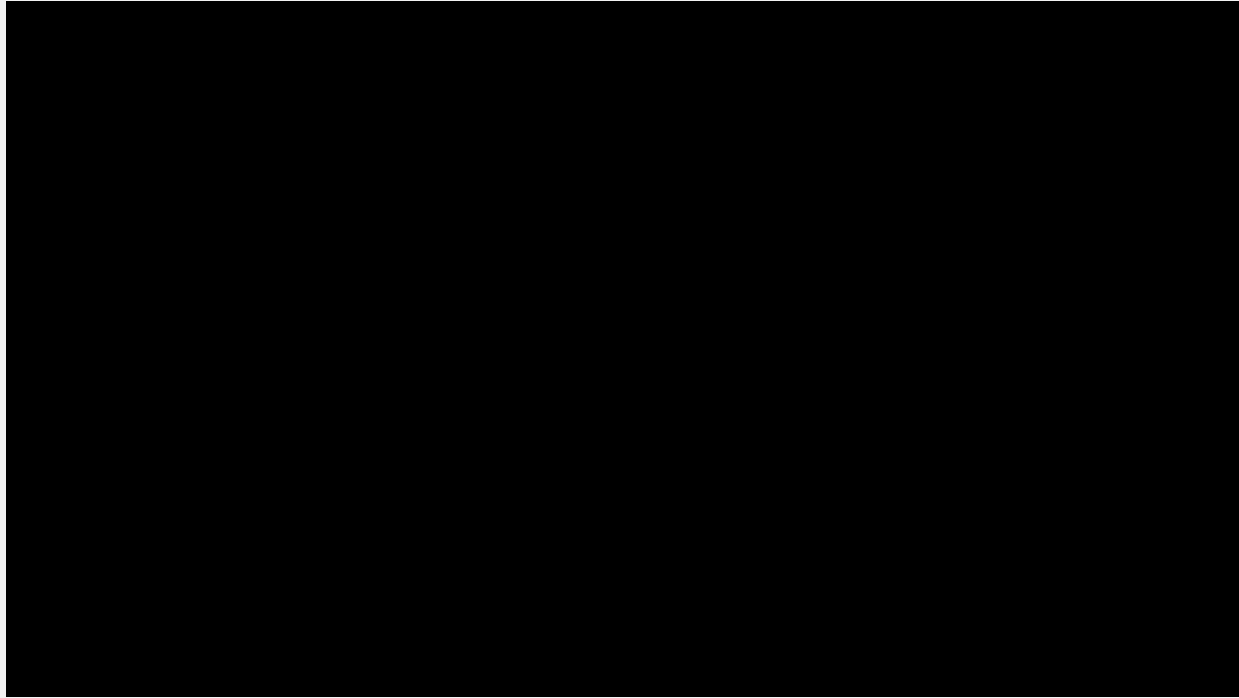
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▼ Crisis, What Crisis?



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▼ Crisis Management in the Movies



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▼ What is a Crisis?

- A crisis is an abnormal situation, or even perception, which is beyond the scope of everyday business and which threatens the operation, safety and reputation of an organization.

UK Department for Business Innovation and Skills

- A crisis is a badly managed abnormal situation.

Types of Crises

- Operational: strike, physical plant/ infrastructure failure, supply-chain breakdown, product failure, recall
- Business: share collapse, insolvency, takeover, management/ board turmoil, shareholder revolt, IP theft
- Legal: litigation, fraud, theft, bribery, graft, whistle-blower, cover up
- Technology: system failure, data breach, cyber attack, ransomware
- Disaster: external events, workplace accidents and fatalities, workplace violence, customer injuries/ fatalities
- Reputation: institutional culture, scandal, social media, boycott

Common Features of Crises

- Situation materializes unexpectedly
- Cascading time pressures for decision making and resolution
- Complexity and uncertainty about decision path
- Urgent demands for information combined with inadequate information
- Lack of control over external events
- Routine business becomes increasingly difficult
- Significant interest from public and media, often negative
- Communications are increasingly difficult to manage
- Demands are made to accept or attribute blame
- Reputation suffers

▼ Prototypical Crisis: Data Breach

- Super-Shop is a large national grocery chain. It recently rolled-out a “scan and pay” system at its stores. The design and roll-out was plagued by bugs and delays but management held firm on the pre-Christmas season go-live date for financial reasons.
- Shortly after the roll-out, there are numerous complaints from stores about bugs and glitches which raised significant system security and integrity concerns.
- The company views these complaints to be “normal” teething-problems with any new system. The company does not shut down the system or conduct a proper investigation.
- In the new year, the company determines there was a significant data breach in December where hackers had accessed the system and stolen customer credit card and personal information. The scope and extent of the breach is not fully known.
- Before the company can make a public statement about the breach, an anonymous whistleblower leaks an internal company report on the internet suggesting the company knew of the security problems and did nothing about them.
- A social and print media backlash follows. Regulators and class-actions are not far behind.

▼ Crisis Communications

- A good reputation is the best protection you can have
- A good response plan is second best
- Walk the walk before you talk the talk
- Tell it all, tell it fast
 - Regret/Resolution/Reform/Restitution
 - Time is measured in hours, not days
- Be mindful of a “second bounce”

▼ Crisis Communications

- Identify a single external spokesperson.
- Have a clear communications strategy and plan.
- Be open and up front with employees, stakeholders, the public and the media. Tell the truth and tell it often.
- Stick to the facts and don't speculate. If you don't know, say so.
- Communicate with motive, emotion and empathy. Tell people what you are doing for them, not what this means to you.

Consequences of Mismanagement

- Injury or harm to persons or property
- Reputational/ brand damage
- Disruption of business
- Loss of revenue and
- Loss in share value
- Organizational upheaval
- Decline in employee morale

▼ What is Crisis Management?

- Crisis management is the overarching process that provides the appropriate structure, leadership, decision making and communications response to support the organization in managing the crisis
- Crisis management facilitates effective preparation, response and execution

▼ Key Principles of Crisis Management

- Leadership is key: people look to their leaders when things go wrong.
- Have a plan beforehand. You cannot make it up as you go.
- Making the problem go away is different than identifying its cause and remedying its consequences. All must be tackled.
- Take quick, meaningful and visible action. Don't let the perfect become the enemy of the good.
- Protect people before property or business interests.
- Communicate proactively, honestly and empathetically with all stakeholders.

▼ Key Principles of Crisis Management

- The 5 P's of crisis management:
 1. Prediction
 2. Prevention
 3. Preparation
 4. Performance
 5. Post-mortem

▼ Predicting and Preventing Crises

- Bad things happen to good organizations.
- Assume that a crisis can and will happen. If it can happen to your competitor, it can happen to you.
- Analyze your business for potential crises. What can foreseeably go awry in your business?
- Perform risk and crisis management audits.
- Understand which risks can be insured and reasonably insure them. Consult a reputable insurance broker.

▼ Planning and Preparing

- Have a:
 - Crisis management team
 - Crisis management plan
 - Internal communications protocol (including a protocol to manage and protect privileged communications)
 - External communications protocol

▼ Planning and Preparing

- Key elements of a crisis management plan:
 - Crisis management team: core, dedicated team drawn from all departments, made known company-wide
 - Clear reporting and decision making processes: pre-arrange approvals, if possible
 - Dedicated information gathering persons/ departments and processes
 - Protocols for internal/external communication (who is authorized, identify single external spokesperson, clear communication approval process)
 - Identify external counsel, professionals and their roles beforehand.
- It is critical to test, dry-run and modify the plan as needed. The crisis should not be the first time to test the plan.

▼ Responding to Crisis

- Have an air traffic controller responsible for managing the response. Often in-house counsel.
- What is known and what is unknown? Have a plan to find out the unknown. Gather relevant documents and people.
- Find the applicable plans and implement them. What plans need to be changed? What plans need to be created from scratch?
- Take control over internal and external communications immediately. Limit internal communication lines. Identify and external spokesperson.
- Sort problems into buckets. Delegate responsibility for each bucket.
- Monitor progress continually. Meet and communicate frequently. Change plans as needed.

▼ Responding to Crisis—View from the trenches

- Crises can metastasize in ways both predictable and unpredictable
- Do your best to acquire the necessary facts, as quickly and reliably as possible
- Crisis is not the time to be excessively cautious

▼ Responding to Crisis—View from the trenches

- Issues to consider:
 - Is senior management implicated in the problem and does there need to be an alternative reporting and decision-making structure
 - Reporting obligations under law and to insurers
 - Establishing and safeguarding privilege – including with respect to communications advisors
 - *Apology Act*, SBC 2006, c 19
 - Commissioning an internal or independent investigation

▼ Crisis Management—Ethical Considerations

- Lawyers have a duty to guide organizations to act in ways that are legal, ethical and reputable: BC Code of Professional Conduct, Rule 3.2-8:

“This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization’s and the public’s interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable and consistent with the organization’s responsibilities to its constituents and to the public” (Commentary 6 to B.C. Code R. 3.2-8)
- Let your values be your guide.

▼ Crisis Management—Resolution of Ethical Dilemmas

- Practical strategies for resolving ethical issues during a crisis:
 - Effectively spot issues by developing an informed ethical intelligence.
 - Be clear about who is your client—company vs. officers and directors vs. employees. Consider where ILA should be recommended.
 - Advise based on your client's long term best interests.
 - Where the answer is not clear, proceed purposively from first principles.

▼ Debrief after the Crisis

- When the dust has settled it is important to conduct a holistic and multi-disciplinary review of the whole affair.
- This review should include a root cause analysis of the underlying problem and a “things done right—things done wrong” analysis of the response.
- Changes should be made to corporate and operational procedures and to the response plan if appropriate. Don't just shove the plan back in a drawer.



Q&A



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The information in this presentation is intended to provide general comments on legal issues. The information in this presentation is not intended to provide legal advice. Participants should seek out legal advice on issues specific to them before acting on any information provided in this presentation. We would be pleased to provide additional information on request.

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