The Board's Role in Crisis Management

OSLER

Table of Contents

1

Introduction

Whether a private or public company, a not-for-profit, a Crown corporation or government agency, every enterprise will face a crisis sooner or later. When that crisis hits, the organization's ability to side-step disaster will be determined by the effectiveness of its response. The reputation, skills, commitment and judgment of its management and board of directors, along with the quality of support by their advisors, are crucial.

Each crisis is unique. Its cause and impact will depend on a range of variables including the nature of the organization's operations and its governance, culture and resiliency. The extent of damage to the organization's reputation, financial health, or continued viability is often subject to uncontrollable elements including the level of media attention, stakeholder and community interest, and the quality of information available to the organization, just to name a few. These elements vary from circumstance to circumstance but, as unique as they may be, there are common threads of crisis management that can be identified in those organizations that have successfully weathered the storm.

Preparedness and oversight of crisis management is a key responsibility of an organization's board of directors. The Institute of Corporate Directors (ICD) and Osler, Hoskin & Harcourt LLP (Osler) believe that organizations can do more to prepare for, withstand, and survive a crisis. With this in mind, the two groups jointly commissioned this research paper on board attitudes and approaches to crisis management.

ICD CRISIS MANAGEMENT SURVEY HIGHLIGHTS

The majority of Canadian directors believe their companies are ready for a crisis, but recent data shows they might be overconfident.

January 2016: the Institute of Corporate Directors asked its members to complete a 37-question survey on crisis management preparedness. The survey was prepared by Osler, Hoskin & Harcourt LLP (Osler) and over 400 Directors responded.

As a baseline for the paper, the ICD commissioned Osler to prepare a survey which was then sent to the ICD membership. After receiving and analyzing the survey results, the ICD and Osler invited a group of experienced corporate directors to participate in roundtable discussions. The participants included Chris Clark, Gail Cook-Bennett, Maureen McCaw, Stan Magidson, Jane Peverett and Larry Stevenson. The discussions focused on the role of the board in managing a crisis, with particular attention placed on the survey's results and comments. A cross-country series of panel discussions on crisis management was held in Calgary, Montréal, Toronto and Vancouver to provide further input.

The survey results showed that most directors have faith that a crisis management plan is in place, and that the executive team is adequately prepared. But all is not as it seems. Other survey responses, comments and anecdotal evidence from participants in the director roundtable discussions and cross-country panel discussions indicate that those survey results may reveal some overconfidence.

This white paper seeks to review some of the survey's key results and place them, along with the roundtable comments, in context.

79.3%

have confidence in their management teams to handle a sudden crisis.

66.9%

confirm the existence of a formal crisis response plan.

2

What Is a Crisis?

It is important to start by better ascertaining what board members generally understand to be a crisis. One roundtable participant defined it as a "realized risk that threatens to substantially disrupt, damage or destroy the organization's operations, business or reputation." In this regard, it is seen as a threat to the company's existence.

Some crises can be foreseen, others not. Some crises arise suddenly and are on a large scale, like terrorist events, natural disasters, computer hacking/ransomware, or public health outbreaks. Others may be narrower in scope but equally sudden, for example, the unexpected illness or death of an organization's leader, or a damaging video or comment posted to social media by an employee or a customer involving the organization's business practices or ethics, or those of its leading personnel.

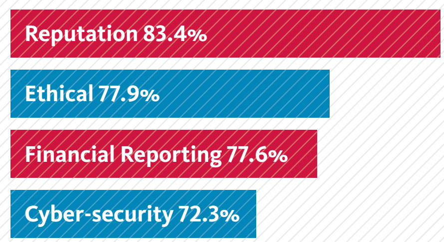
> "Whether it involves the board or management or both ... a crisis, it's something that gets at the heart of the organization."
>
> – *Roundtable participant*

The causes of a crisis may not be a single event. Foreseeable events may give rise to unforeseeable consequences that lead to a crisis. A series of innocuous events or circumstances can build and compound over time. Consider, for example the impact on the newsprint industry of the move to digital media, or the response of a disgruntled employee whose frustration with unanswered complaints eventually reaches a boiling point. Crises may also be the result of the compounding of unrelated risks, such as poor accounting practices and overstatement of revenues hitting a critical mass at the same time as an economic downturn, a large order cancellation, a new competitor entering the market, or an unrelated stock price drop.

Regardless of the cause, crises have the potential to unleash a great deal of damage in a very short time.

> "When you have a combination of things that will erode fundamental trust, reputation or business continuity, you have the ingredients for a crisis. And one of the worst crises you can have or one of the worst things that can happen in a crisis is a failed response which then itself becomes the crisis."
>
> – *Roundtable participant*

Key Risks Flagged by Directors Are No Surprise



A Crisis is a realized risk that threatens to substantially disrupt, damage or destroy the organization's operations, business or reputation.

3

Understanding, Defining and Respecting Management's and the Board's Roles in Crisis Management

Preparation is a vital tool for preventing damaging circumstances from becoming a crisis. It is also instrumental in mitigating and containing harm when a crisis arises. Preparation demands that both the board and management understand their respective responsibilities, during preparation as well as when navigating the storm when it hits.

Management is responsible for developing and implementing an organization's overall strategy, taking into account business-related opportunities and risks. Management is also responsible for developing an appropriate crisis plan, and forming and preparing a crisis team.

The board is responsible for overseeing management's work in these areas and monitoring its progress. This is not to suggest that the board can relax its vigilance – in fact the board may need to play a greater role when management is unable to do so. Examples of this would be when management is implicated in the crisis, or when it lacks the skills necessary to resolve it. But directors should resist the urge to jump in and possibly impede management's ability to do its job.

> "If a company is well prepared, if your management team is well prepared, something is less likely to become the kind of crisis that requires the board's oversight ... In some famous recent crises, there was nothing honestly the board could do other than stay informed."
>
> – *Roundtable participant*

4

The Role of the Board in Crisis Preparation

Consistent with its stewardship role in overseeing crisis preparation at the organization, the board should ensure that the organization's priorities include

- Proactive prevention
- Promoting and safeguarding culture and reputation
- Explicit crisis planning

"As a board you need to make sure that the company has done a thorough evaluation of what its potential risks are and that it has a 'Plan-B' ... The board should also be making sure that the company keeps that list of risks very current."

– Roundtable participant

PROACTIVE PREVENTION

While crises can arise from unexpected external events, there are often other causes that can be identified and managed. This means addressing potential problems before they develop into a crisis, and confirming there is a plan in place for effectively responding to issues as they arise.

Enterprise Risk Management

A key tool for identifying and managing risks is the organization's enterprise risk management system. A board should satisfy itself that the organization has a robust enterprise risk management program and that management is active, consistent and open in its efforts to identify and manage risk.

According to the ICD survey, only 29% of respondents stated they were "comfortable that [their] enterprise risk management system has identified the material risks of the business." A larger share, 40%, expressed that they were moderately comfortable, and almost one-third was "somewhat," "not very" or "not at all" comfortable. Even worse was the admission by 40% of respondents that, "our enterprise risk management system only 'somewhat' considers the interdependencies of risks and the compounding effects of two or more risks occurring at the same time."

Even with a robust enterprise risk management system in place, some risks are difficult to manage or mitigate.

> "There is a lot more third party risk out there. A lot of risks you don't effectively control within your organization anymore. So how do you control the risks your service providers are taking on certain obligations on your behalf."
>
> – *Roundtable participant*

And while risks can be monitored and their occurrence or effects mitigated, not all can be eliminated.

> "You are never going to be able to eliminate the possibility of crises happening or eliminate risks. If you are trying to eliminate it, then you are spending way too much time on that and not enough time on the business itself."
>
> – *Roundtable participant*

Sensitivity to Early Warning Signals

A formal risk enterprise management system does not capture all risks that can lead to a crisis. A board needs to be alert to early warning signs of a potential future crisis. The board needs to be able to spot signs of management complacency, over-optimism or blinkered thinking that might allow a budding risk to develop into a crisis. Directors must be familiar with the business and the strategy of the organization and question management's approach and assumptions. For example, management could be asked to

- Describe what customers and competitors are doing, since their actions may highlight trends and threats
- Report on employee engagement, with supporting statistics on absenteeism, accidents, union concerns and whistleblowing reports
- Report on relations with investors, lenders, regulators and communities in which the organization operates

It is troubling that one in five survey respondents indicated that they don't receive enough information to oversee management generally and that a majority of respondents indicated their boards either did not consider how their organization would respond to a crisis affecting a competitor or did not know if the board had done so.

A company and its board should be concerned if management

- Has no crisis response plan
- Fails to inform the board about factors that could lead to crises
- Doesn't consult or take advice from the board regarding the handling of those types of matters
- Fails to respond quickly and effectively to problems that could lead to crises
- Fails to learn from prior near or actual crises[1]

> "When we have seen a major problem and frustration from the board point of view, it is when it festers in the organization and the people who have a problem in front of them, there is always a mentality that they can just fix it. They may not be dishonest; they just think that they can fix it."
>
> *– Roundtable participant*

PROMOTING AND SAFEGUARDING CULTURE AND REPUTATION

The culture within an organization and its reputation with stakeholders can profoundly influence not only the likelihood of identifying and managing risks before they develop into crises, but also the organization's ability to withstand and survive a crisis when it hits.

Culture

The board should understand the values of the organization and assess whether management is managing according to those values, living them and setting the right tone. The board should further satisfy itself that in setting the appropriate "tone at the top," management is creating a demonstrable culture of integrity throughout the organization.

> "At the core, is the culture. Do we know as directors, what's happening in the organization and how you go about getting things done? It's more than just saying, does anybody know of anything that's going wrong in the organization in the past year."
>
> *– Roundtable participant*

In some organizations, for example, there is a culture of complete faith in the executive, paired with a tendency to sweep things under the rug or shift blame rather than tackle growing problems head-on. There may be great faith in the charisma of an entrepreneurial leader or in the growing momentum of a new area of commerce that obscures a clear vision or commitment to adequate crisis readiness. Other companies, perhaps younger or smaller, may willingly move caution and due diligence to the back burner in the race to grow, incurring risks for which there will be a future day of reckoning. Boards need to be alert to concerns in the culture of the organization as a potential early warning sign for a future crisis.

1 20 Questions Directors Should Ask About Crisis Management, Chartered Professional Accountants Canada (2008), p.13

Reputation

A good reputation builds resiliency, while a poor one contributes to vulnerability. Reputation flows from corporate values, culture, and tone at the top, along with appropriate CEO selection and development of a communications strategy. It is the board's responsibility to assess whether these factors have been built into the culture and adequately maintained.

Respondents' answers to the survey confirm that reputation-building is ranked very high when compared with a board's other oversight responsibilities: over 76% of respondents stated that reputation was important compared to other board responsibilities, with 44.7% rating it as very important and 31.4% rating it as "moderately important."

A good reputation means some negative issues can roll off rather than stick. It also helps an organization enjoy the benefit of the doubt, which buys time and space to get a message out before investors, analysts, employees, customers, regulators and the media form their opinions.

> "Reputation can provide you optionality as well as a protective measure. And buy you a little time as well."
>
> – *Roundtable participant*
>
> "Having a strong reputation can give you the benefit of the doubt. Having a little credibility to work with."
>
> – *Roundtable participant*

When asked to rank crisis management preparation compared to the board's other oversight responsibilities, survey respondents ranked crisis management equally as highly as reputation-building: over 75% of respondents stated that crisis management was important compared to other board responsibilities, with 42.3% rating it as very important and 35.8% rating it as "moderately important."

It is not surprising that reputation and crisis management were similarly ranked by survey participants. A crisis is a litmus test for the strength of the company's reputation. The support of shareholders, regulators, customers, suppliers, communities and other stakeholders through the crisis will have a profound impact on the organization's chances of survival as well as its willingness to maintain transparency and clear communication throughout the event, the inquiry, and the restoration process. This support should never be taken for granted. It is vital to continue to bolster that support during the crisis, as well as during the subsequent rebuilding process.

Over 83% of survey respondents cited reputation risk as an important material risk to the organizations they serve. Indeed, this risk was ranked higher than any other single category. It is difficult, however, to describe what reputation risk encompasses. As one roundtable participant described it, "reputation risk" may be the "risk of all risks," encompassing the lens through which risks are viewed and assessed for their potential long-term impact on the organization.

Over

75%

of board members agree

reputation building & crisis management preparation

are important parts of their mandate.

While it makes sense that oversight of the company's reputation and of crisis management preparation are equally important board responsibilities, the question remains whether boards are ensuring that management devotes sufficient time and thought to avoiding and preparing for crises.

> "I think that's a critical part of our role … making sure that reputational risks, as you assess them, are being managed … The most critical thing is having that overarching plan in place, be it communications, spokesperson, whatever it might be … How are you going to react to a different set of risks that might come at you? Because you are never going to be able to define everything that might come at you."
>
> – *Roundtable participant*

Only

24.6%

of survey respondents viewed social media as being a key material risk.

Headline Risk

"How would this look in the paper? Could we explain it? Could we defend it?" These are questions that could apply to valid and perfectly legal strategies that could nevertheless give rise to political, regulatory or reputational risk. Management should be prepared to answer these questions when asked by the board. In an organization with a strong culture of integrity, consideration of headline risk should be automatic.

Social media has made consideration of headline risk more important than ever. Social media's pervasive influence can enhance or destroy a company's reputation, and can do so on an accelerated timeframe. Although a high proportion of survey respondents viewed reputational risk as very important, given the impact of social media in making or breaking reputations, it was surprising to see that only 24.6% of survey respondents viewed social media as being a key material risk. When asked whether the organization monitors social media, only roughly half were able to answer it does.

5

The Crisis Management Plan and Team

How do you inculcate crisis management into corporate culture? The answer is to plan for it, and periodically update the plan as circumstances change.

> "We don't know the event, but we need to know that we have the right people in preparation and that they are agile and astute enough to be able to carry forward with it, in a way that we have committed to do so. Are you ready to do it whenever this thing happens? ... Do we have the right communication, the right people, the right liability protections, the right legal team – we need all these things."
>
> – *Roundtable participant*

A Crisis Management Plan

A board can add value by requiring management to develop and document a crisis management plan that meets the board's approval. Key components of the plan should include

- An effective response plan that highlights the responsibilities of identified key team members who are prepared and trained to take immediate action on all aspects of the crisis, ranging from safety through to legal and insurance
- A communications plan including a spokesperson for the media, and appropriate leadership internally for employees
- Careful review to check that statements and other actions are not incorrectly perceived despite their best intentions
- Consideration of the potential impact on affected stakeholder groups, including shareholders, employees, customers, business partners, regulators, and elected officials – and contact information for communicating with them
- A business resumption plan to get things back on track as quickly and efficiently as possible

The board needs to be comfortable that the appropriate persons are identified and

- Are prepared
- Are agile and astute enough to take note of what is happening inside and outside the company's walls
- Are able to balance the competing needs of preserving corporate reputation with minimizing legal liabilities
- Have pulled together a team of internal personnel and external advisors that can make sound judgments and execute under pressure

The plan must take into consideration some critical challenges facing the appointed team. These individuals must be able to

- Balance quick action with time for reflection/fact-gathering/sound and informed decision-making
- Maintain an appropriate balance of perspective, objectivity and urgency
- Gather and utilize complete and sufficient information
- Be prepared for scrutiny from the media and shareholders
- Have the knowledge, skills, temperament and ability to handle the crisis

A strong management team may have already prepared a formal plan, in which case the board's role will be to question management's process and assumptions until it is comfortable that the plan is appropriate. However, in some organizations the board may have to overcome management complacency or even fatalism, embodied in the retort, "how do you plan for the unplannable?"

While a crisis may be sudden and unexpected, planning can free up a precious commodity that is lacking when an organization is dealing with a crisis – time. A crisis plan can define or narrow the range of questions and decisions for different potential scenarios so that the organization can make the most of the time and information and other resources it has available. A plan can also address the day-to-day needs of the business while management's time and resources are devoted to handling the crisis.

Moreover, review and approval of a crisis management plan by the board can provide an opportunity for directors to engage in a meaningful discussion amongst themselves and with management, regarding vulnerabilities that may not have been fully considered during discussions on the principal risks. Examples of these "other vulnerabilities" include those that arise from the culture of the organization, and those that can be identified by paying close attention to early warning signals.

An effective crisis management plan should also entail periodic review of director and officer indemnity agreements and insurance policies. If indemnities and insurance are out of date or lacking altogether, that can at best prove distracting in responding to a crisis and at worst can compound the problem, especially if

More diligence required to protect board members

50.6%

fail to review D&O indemnity agreements annually.

44.7%

fail to have D&O insurance policies annually reviewed by an external advisor.

liability concerns cause directors or officers to leave. Survey results indicate more work is needed in this area as over 50.6% of responding directors indicated that their organization fails to conduct an annual review of D&O indemnity agreements and 44.7% of respondents indicated that their organization's D&O insurance policies are not reviewed annually by an external advisor.

The Team and Its Advisors

The crisis management plan must clearly identify the individuals who will act as internal leads for different types of crises, along with those who will act as fully qualified internal backup in case the crisis lead is unavailable. Part of this involves simply knowing who is going to handle items in a formalized manner. In many organizations and boards, this is typically dealt with informally as to who is going to be the point person.

The board must also assess and confirm the importance of identifying external advisors (legal, communication and accounting) for support, as well as identifying needed director skills and recruiting directors to fill any gaps.

> "It's critical to get good advisors. Boards rely on the advice they get. I have seen good advisors who have good judgment and I have seen very poor advisors. It is night and day in terms of outcome."
>
> – *Roundtable participant*

This will require some agreement as to the characteristics of "good advisors." Together they should comprise a team of people who understand your business and your risks, can respond quickly, have experience and subject matter expertise, as well as an ability to work well with others. These are often multi-disciplinary problems that require close coordination across disciplines to arrive at a good outcome. It is strongly suggested these advisors be engaged before a crisis hits. Surveyed directors expect to turn to the organization's existing advisors for advice in a crisis, with 66.3% stating they would retain existing external legal counsel to assist the organization.

While the organization's primary counsel may be well-positioned to advise the organization, in some situations the board may need independent legal advice. A crisis management plan should also contemplate where the board would turn to for advice if needed. Surprisingly, 53.2% of director respondents would also rely on the company's external legal advisor to advise the board. While this speaks well of the confidence directors have in the professional standards of the organization's external legal advisors, it also evidences a significant potential gap in crisis planning that could result in delays in certain situations.

Directors expect to use existing advisors for advice in a crisis

66.3%

would retain existing external legal counsel to assist the company.

53.2%

would use that same advisor to advise the board as well.

Avoiding Complacency

A crisis is an event that nobody ever wants and that is not always avoidable. It is like an unwelcome guest you hope will never show up – the type who you hope will leave as soon as possible. It can be tempting to avoid or postpone planning for an unpleasant matter. Investing precious resources into threat assessment and preparation may appear as extravagance, too much time spent worrying, not enough time spent selling and doing, especially when the explicit assumption is that the management team has things under control. Sometimes crisis management concerns are hidden beneath a cloak of complacency; the belief that "we have it under control, the CEO has a plan, everything is alright," or, "we will be able to fix it when the time comes."

No matter how much people wish to avoid them, crises do happen. Approximately 55% of survey respondents stated that they had served on a board of a company that experienced a crisis.

Directors responding to the survey believe they're ready for a crisis, with 66.9% reporting they have a formal crisis response plan, although among public company directors, the number giving this response was lower at 60%.

We question directors' actual levels of confidence.

In our experience, few companies have a formal crisis response plan. Although 67% of respondents confirmed knowledge of a formal crisis plan, we question how robust those plans may be since almost 49% of these admitted that the response plan had not been reviewed by an external advisor, and 23% said they did not know.

Perhaps the responses are merely a reflection of confidence in the existing management team's ability to handle a crisis. A clear majority of respondents to the ICD poll – 79.3% – believes that their management team has "the necessary skills to respond to a sudden and unforeseen crisis." Yet directors lack a corresponding level of confidence in management's principal tool for heading off potential crises, the enterprise risk management system. Just 29.3% of directors say they're very comfortable that it has identified the material risks to the business.

Moreover, crisis management planning needs to address the real possibility of management being unavailable when a crisis occurs. Over 35% of the directors who reported experiencing a crisis mentioned that the CEO had been replaced during the crisis, and over 27% of directors reported they either don't, or don't know, if they have a succession plan in place – including a plan to address the unexpected incapacitation of the CEO.

We can see evidence of a need for reduction in complacency in several of the responses to the ICD questionnaire. One specifically troubling area deals with the organization's whistleblower programs.

There are reasons to question confidence in their crisis readiness

Only

29.3%

are very confident that their Enterprise Risk Management system has identified material risks.

While

27.1%

admit they either don't or don't know if they have a succession plan in place including a plan to address the unexpected incapacitation of the CEO.

Only

28%

had an external advisor review their crisis response plan.

An effective and transparent whistleblower program is an essential element to building a culture of integrity to enhance company reputation and ethics – key elements of crisis preparation as noted above. Only 30.9% of respondents were very confident in the effectiveness of their whistleblower program and only 17.5% are very confident that their program is perceived by employees and service providers to be effective. Confidence in internal whistleblower programs needs to be very high. Regulators and government agencies are increasingly offering financial incentives to whistleblowers to report non-compliance with securities laws. While a number of them encourage whistleblowers to report concerns internally, whistleblowers are not specifically required to do so – which increases the risk of a surprise investigation, especially if the company's program is not effective.

As organizations grow, or their business or operating environment changes, they need to remain aware of the moving goalposts, especially political, regulatory, and competitive, which not only may change the risk profile of the organization but can necessitate changes in its approach to crisis management. It can be easy for a company to fall into a pattern of regularity, and consequently fail to look up, look around and consider whether their past practices are no longer in favour.

Low confidence in whistleblower program

30.9%

say whistleblower program is very effective.

17.5%

believe employees and service providers perceive their whistleblower program useful for raising potential concerns.

6

Key Challenges in Dealing with a Crisis

When a crisis unfolds, there is enormous pressure to take immediate steps to respond to the situation and communicate a response, even while the organization is still gathering information about the underlying cause of the crisis.

It can be difficult to balance

- The need for a speedy response and the time needed to properly reflect on known information
- The desire to explore or preserve all options versus focusing on the most promising ones
- Being responsible with liability concerns
- The need for perspective, objectivity and urgency

Modern news media is global, instantaneous and permanent. From the biggest outlets (CBC, CNN) to industry magazines and independent bloggers, a story – especially a bad news story – is all but guaranteed to make its way to the public ear, where it will be repeated endlessly and will become part of the Internet's permanent record. Options for containing a story no longer exist, and in fact may only succeed in magnifying coverage. Consequently, a strategy for handling a news story must be quick, comprehensive, up-to-date and intelligent. As politicians and corporate leaders have already learned, every word, every image and every second spent in front of media must be carefully prepared and skillfully managed.

> "News coverage will be unfair. You will see it's unfair. It will be coming at you from a whole bunch of angles which are in your mind not relevant to the situation and they will be dragging stuff up and putting things together that have absolutely no bearing on what it is you're working on or what the problem is. But it will be out there and it will be constant."
>
> – *Roundtable participant*

Approximately

55%

of survey respondents stated that they had served on a board of a company that experienced a crisis.

Boards should focus on how the organization should best address the underlying problem, making any necessary changes to policies, practices and personnel, and communicating an effective response. "Do the right thing" is as good a rule as any. In addition, boards should also help management find a balance between PR concerns (including an apology, if one is warranted) and managing potential liability. This is not necessarily a zero sum game.

Board's Role Generally

If the organization has a formal crisis management plan, generally management should handle the immediate needs and directors should resist the urge to make too many demands on management's time. The board should provide guidance to management and support the organization's communication strategy. This can be a challenge as directors will be predisposed to help address the crisis and the board's role will be scrutinized and possibly criticized in the media.

> "I think you have to have that dialectical assessment of really where the crisis should be addressed – is this something that management should be involved in or is it something that management should be isolated from so that we can get to the bottom of it and tell the whole story."
>
> – *Roundtable participant*

Communications between management and the board provides an opportunity for sober second thought by directors who, unlike management, are not immersed in day-to-day situation. Boards can assist by

- Considering and questioning management regarding the reliability of known facts
- Discussing with management whether there are additional sources that can confirm accuracy of known facts
- Assessing whether further investigation is needed, and how much time and cost that would take
- Assessing the likelihood of identifying other problems with further investigation
- Helping management find the balance between communication concerns, including taking responsibility if appropriate, and potential liability to the company
- Assessing and advising management on its handling of the crisis
- Providing assistive feedback to management as appropriate

Approximately 73.5% of directors who served on the board of a company that experienced a crisis reported that the board met in the absence of management to assess whether management was capable of managing the crisis.

About **73.5%** of directors who experienced a crisis while on a board met without management to assess whether management could handle the crisis

A board may need to create a board committee to support and oversee management's handling of the crisis. Time pressures in managing a crisis are high and may exceed director capacity, especially if the director is a senior executive at another organization. The need for quick decision-making by the board or for a speedy response in a quickly changing dynamic can necessitate delegation of board authority to a committee of directors. In addition, it may be necessary to create a committee of independent directors where an independent process is necessary or advisable. Over 58% of directors who served on the board of a company that experienced a crisis reported that the board appointed a special committee to coordinate the board's activities in response to the crisis.

The board may also play an active role in acting as a mentor or sounding board for a highly overtaxed CEO in the middle of a crisis. This was brought up many times during the roundtable discussions:

> "The problem for any CEO once crisis happens, he/she's got 20-hour days forever and sometimes can't step back."
>
> – *Roundtable participant*

> "I think there is a role for the board to play of not only oversight, but hopefully sage counsel ... Just knowing that you have your board's support will be important to that CEO. It's important to have a sounding board and it's hard for a CEO to share doubts or concerns with his or her management team."
>
> – *Roundtable participant*

Roundtable participants also spoke of the value of having an independent board chair to provide support and direction when appropriate.

Board's Role When Management is Unavailable, Conflicted or Otherwise Compromised

Not all crises are the result of external forces. A crisis can arise due to the death or sudden incapacity of the CEO. If the CEO is implicated or conflicted, whether due to management error, complacency, a personal issue or corruption, and can no longer objectively handle the crisis, or if confidence in the CEO's leadership has been completely shattered, the determination must be made by the board as to whether the CEO should be terminated or removed temporarily. The board may need to take a more active role in such circumstances, which may include appointing an interim CEO from among management (if an uncompromised successor has been identified in the crisis management plan or the management succession plan), from among the directors (if a director has appropriate qualifications) or recruited externally. Roundtable participants acknowledged there are substantial challenges in handling a crisis when management is not in a position to take leadership.

At least one director that Osler spoke to admitted that every board with which the director was involved was underprepared in this area.

> "Board members – we don't call upon them that way to be able to step into an executive role. They provide oversight from a governance perspective but we don't call upon them to act. So that's a component of good succession planning. Counting on the fact that you have somebody else in the ranks who understands and has the capability."
>
> – *Roundtable participant*

If management is implicated or conflicted by the crisis, it is often advisable to create a committee of independent directors to oversee investigations and to make recommendations to the broader board on how best to proceed in response.

7

Post-crisis Assessment

It is essential when dealing with a crisis, that the concluding phase include an assessment. Once again, time becomes an adversary in that everyone is often too busy to make themselves available for after-action review. This is the essence of successful project management, and by extension successful crisis management. A post-crisis assessment allows for learning to take place and for the acceptance of new policies and standards to ensure the same types of circumstances do not align to repeat the problem.

> "The board's role is to ask itself ... why did this happen? How do we make sure that it's not going to happen again? Has management addressed the issue that's led to the crisis?"
>
> – *Roundtable participant*

Following the crisis, the board should review with management any learnings from the experience. These can include not only a better understanding of the underlying causes of the crisis, but also its impact on the organization's reputation and relationships with key stakeholders, how effective was management and the board in dealing with the crisis and what improvements should be made to the organization's processes, including its crisis management plan.

Surveyed directors who had served on the board of a company that experienced a crisis reported that approximately 90% of the time the board was united in its approach to the crisis and the board's involvement in the crisis was timely and appropriate.

Surprisingly, only 57% of the directors who had served on the board of a company that experienced a crisis reported making any change to the company's risk management systems in response to the crisis – which raises questions about the rigour or frequency of the post-crisis assessments.

> "Plans always seem to cover the thing that doesn't become the next crisis, you plan for the previous war. And so all the obvious crises are planned for, but it's the ones that come out of left field that surprise you."
>
> – *Roundtable participant*

Only

57%

of directors who experienced a crisis while on a board reported making changes to the risk management systems as a result of the crisis.

8

Conclusions

The results of the ICD survey and the subsequent roundtable and cross-country panel discussions confirm that directors recognize the importance of the board's role in crisis management. Although the survey also indicated that directors have a high level of confidence in the organization's ability to withstand a crisis, other survey results and comments and anecdotal evidence from participants suggest more work is needed. In particular, boards should

- Consider whether the organization's practices for identifying and managing risk are sufficiently robust
- Assess whether management is taking appropriate steps to maintain or enhance the organization's culture and reputation
- Approve a formal crisis management plan prepared by management
- View oversight of crisis management as an ongoing aspect of their mandate

A

When All Else Fails – Planning for a Crisis

Even the best preventative risk management programs will not root out all threats, so companies should remain prepared for a matter than can evolve into an unforeseen crisis at any time. The following are key steps to managing a potential crisis:

1. Identify the actual problem.

While this seems obvious, it is not always simple to understand what the real issue is. Many times, the quickest path is to find the origin (e.g., whistleblower, regulator, press, litigant) and work from there.

2. Report.

Board members, like executives and shareholders, do not want to be blindsided. Make sure to report to the board early in the process. Not only does this provide some defensibility, it also includes the board in the decision-making process, which can minimize impact for all stakeholders.

3. Understand the risks and potential consequences.

Even a seemingly simple issue can create any number of downstream risks. It is crucial to gain a quick understanding of the impact on the company, including regulatory compliance, reputation, potential lawsuits, finances, and customer and supplier relationships.

4. Leverage your experts.

In most instances the company should immediately retain outside counsel, but any number of additional steps should be considered. Is an internal investigation necessary? How should the press be handled? Has the board been made aware? Does the audit committee need to be involved? Will the company have to restate financials? To what extent do regulators need to be informed? Should steps be taken to isolate the specific bad actors (or their superiors)? These questions, among others, should be asked and answered by the general counsel, the board of directors and senior management as well as the company's outside counsel and other experts.

5. Investigate, report, act.

Don't hide – or hide from – a crucial issue. Be sure to uncover what happened, keep all stakeholders informed as required, and take action to solve the problem and ensure it does not reoccur.

B

Survey Questions and Responses

	Very	Moderately	Somewhat	Slightly	Not at All
How important is reputation-building compared with the board's other oversight responsibilities?	44.7%	31.4%	19.1%	3.8%	1.0%
How important is crisis management preparation compared with the board's other oversight responsibilities?	42.3%	35.8%	16.6%	4.0%	1.3%

	Important	Moderately Important	Not Important
Please rank the following risk areas according to how material the risk can be:			
Reputational	83.4%	15.3%	1.3%
Regulatory Change	55.8%	39.6%	4.6%
Compliance	69.8%	27.9%	2.3%
Cyber-security	72.3%	25.2%	2.5%
Anti-corruption	52.0%	36.8%	11.2%
Environmental	45.1%	42.9%	12.0%
Foreign Working Conditions	17.6%	38.4%	44.0%
Employee Health and Safety	69.9%	26.8%	3.3%
Financial Reporting	77.6%	21.4%	1.0%
Currency	18.6%	51.9%	29.5%
Climate Change	12.1%	52.5%	35.4%
Executive Retirement and Retention	48.6%	44.9%	6.5%
Financing	51.5%	37.3%	11.3%
Money Laundering	29.6%	34.4%	36.0%
Ethical	77.9%	20.8%	1.3%
Succession	65.0%	33.0%	2.0%
Social Media	24.6%	59.8%	15.6%
Technology	54.4%	41.4%	4.3%
Non-Disclosure/Confidentiality	51.4%	42.6%	6.0%

	Very	Moderately	Somewhat	Slightly	Not at All
How comfortable are we that our enterprise risk management system has identified the material risks of the business?	29.3%	40.0%	22.8%	5.8%	2.3%
How well does our enterprise risk management system consider the inter-dependencies of risks and the compounding effects of two or more risks occurring at the same time?	13.8%	27.6%	39.7%	12.6%	6.3%
How satisfied are we that the CEO is leading by example in accordance with the company's values and code of conduct?	70.2%	20.3%	8.3%	0.8%	0.5%
How satisfied are we that the CEO and the other executive officers create a culture of integrity throughout the organization?	67.4%	24.3%	6.0%	1.3%	1.0%
How satisfied are we that the management is enforcing the code of conduct?	53.7%	34.9%	9.9%	1.0%	0.5%
Is our complaint handling/ whistleblower program effective at providing an independent and anonymous source of information on potential wrongdoing?	30.9%	35.5%	23.0%	6.9%	3.8%
Is our complaint handling/ whistleblower program perceived by employees and service providers to be a useful means of raising unresolved potential concerns?	17.5%	39.1%	30.1%	9.5%	3.9%

	Very	Moderately	Somewhat	Slightly	Not at All
Are we confident that we have sufficient liquid resources to withstand a downturn in operations or any costs associated with a crisis?	49.5%	26.6%	16.8%	4.9%	2.2%
Are we confident that the board has the confidence of shareholders to oversee management of a crisis?	45.3%	35.3%	16.7%	1.7%	1.1%
Are we confident that the company has the support of the communities in which it operates?	40.2%	42.4%	13.2%	2.2%	1.9%
Are we confident that the business will likely continue to have support of its key regulators despite a crisis?	38.9%	42.5%	13.6%	3.1%	1.9%

	Yes	No	Don't Know
Are directors receiving the information they need to oversee management, generally?	77.9%	15.2%	6.9%
Do we regularly monitor social media for trending conversations that might be indicative of potential concerns?	52.5%	29.6%	17.8%
Have we reviewed crises affecting our competitors and considered how we would respond had we been affected?	47.6%	40.1%	12.3%
Do we have a formal crisis response plan for dealing with a sudden and/or unforeseen crisis?	66.9%	24.6%	8.5%
Was it reviewed by an external advisor?	27.6%	48.8%	23.6%
Does the management team have the necessary skills to respond to a sudden and/or unforeseen crisis?	79.3%	9.5%	11.1%
Do we know who will act as a spokesperson, and who will step in if that person is unable to act as a spokesperson?	84.1%	9.3%	6.6%

	Yes	No	Don't Know
Does the board include directors with sufficient knowledge of the business and the skills, available time and confidence to oversee a crisis?	75.3%	18.4%	6.4%
Is there someone who can take charge of the business if the CEO or CFO are the cause of the crisis or somehow involved in the cause?	82.0%	10.6%	7.4%
Is there a management succession plan in place, including a plan to address the unexpected incapacitation of the CEO?	72.1%	22.8%	5.0%

	Yes, Our Usual Counsel/Advisor	Yes, a Special Counsel/Advisor	No	Don't Know
Do we know who we would retain to assist the company in responding to the crisis?	66.3%	14.9%	7.4%	11.4%
Do we know who we would retain to advise the board overseeing the company's response?	53.2%	17.6%	12.6%	16.6%
Do we know who we would retain as external communications advisor to assist the company in responding to the crisis?	36.3%	25.5%	17.7%	20.4%

	Within 12 Months	Between 12 and 24 Months	Beyond 24 Months
When was our code of conduct last reviewed and rolled out to employees?	58.0%	24.4%	17.6%

	Annually	Every Two Years	Every Three to Five Years	Five Years +
How often is the D&O insurance policy reviewed by an external advisor to the board or board committee?	55.3%	19.4%	15.4%	10.0%
How often are the D&O indemnity agreements reviewed?	49.4%	21.1%	18.5%	11.0%

	Yes	No
Have you been on a board of a company that has experienced a crisis?	54.8%	45.2%
Did the board meet in the absence of management to assess whether management is capable of managing the crisis?	73.5%	26.5%
Did the board appoint a special committee to coordinate the board's activities in response to the crisis?	58.4%	41.6%
Was management effective at managing the crisis?	80.1%	19.9%
Was the CEO replaced?	65.0%	35.0%
Was the board united in its approach?	89.8%	10.2%
Was the board's involvement timely and appropriate?	90.9%	9.1%
Did the company change its risk management systems in response to the crisis?	57.4%	42.6%

	CEO	CFO	Head of Investor Relations	Another Executive	Board Chair	Board Commit-tee Chair	External Communi-cations Advisor
Who acted as chief spokesperson during the crisis?	36.7%	4.1%	1.0%	8.7%	40.8%	7.1%	1.5%

AUTHORS

Andrew MacDougall
Andrew is a partner in Osler's Corporate Group in Toronto and specializes in corporate governance, executive compensation and shareholder activist matters.

amacdougall@osler.com
416.862.4732

Lawrence Ritchie
Larry is a partner in Osler's Litigation Practice Group in Toronto. His practice involves dispute avoidance and resolution across a range of capital markets, the financial sector and other regulated industries and activities.

lritchie@osler.com
416.862.6608

Rob Yalden
Rob is a partner and Co-chair of Osler's national Mergers and Acquisitions Group and Head of the Corporate Department in Osler's Montréal office. He advises public and private companies on mergers and acquisitions, financings and corporate governance.

ryalden@osler.com
514.904.8120

Noralee Bradley
Noralee is a partner in Osler's Corporate Group, based in Calgary. Noralee's practice focuses on mergers and acquisitions, financings and corporate and board governance.

nbradley@osler.com
403.260.7002

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DIRECTOR ROUNDTABLE PARTICIPANTS

Osler would like to thank the following members of the Institute of Corporate Directors for their contributions and wisdom which are reflected in this white paper.

Chris Clark
Chris Clark is a Corporate Director and currently serves as a member of the Board of Directors of Loblaw Companies Limited, Air Canada, Hydro One Inc. and Choice Properties Real Estate Investment Trust. He served as the Chief Executive Officer and Senior Partner of PricewaterhouseCoopers LLP from July 2005 to July 2011. Prior to being elected Chief Executive Officer, Mr. Clark served as National Managing Partner and as a member of the firm's executive committee from 2001 to 2005. Mr. Clark is a Fellow Chartered Professional Accountant, and in addition to his public company board memberships, he has served on a number of not-for-profit boards which currently include the Canadian Olympic Committee, Alpine Canada and the Advisory Council of Queen's University School of Business.

Stan Magidson
Stan Magidson is President, CEO and director of the Institute of Corporate Directors (ICD) and Chair of the Global Network of Director Institutes (GNDI). Prior to joining the ICD in July 2010, he was a partner in the law firm Osler, Hoskin & Harcourt LLP. Mr. Magidson currently serves on the boards of Weizmann Canada and the Canadian Foundation for Governance Research (CFGR), and formerly served on the board of Junior Achievement of Southern Alberta.

Jane Peverett
Jane Peverett is a Corporate Director and in Canada, currently serves on the boards of CIBC and Encana, where she chairs the audit committees, and Hydro One, where she chairs the Governance and Nominating committee. In the United States, she serves on the boards of NW Natural Gas and AEGIS Insurance Services. She was the President & CEO of BC Transmission and prior to that was the President & CEO of Union Gas Limited. Previous board roles include BC Ferry Services, The Canadian Electricity Association, the Canadian Gas Association, the Stratford Festival, the University of Victoria, the United Way of the Lower Mainland, and Junior Achievement of BC. Ms. Peverett sits on the selection committee for the Canadian CEO of the Year and the CFO of the Year, and chairs the selection committee for the BC CEO of the Year.

Gail Cook-Bennett
Gail Cook-Bennett currently serves as the Chair of the ICD and on the Government of Canada Audit Committee, Bridgepoint Active Healthcare Board of Directors, and the Salvation Army National Advisory Board. She is a Member of the Order of Canada. Gail has served on many corporate, Crown and not-for-profit boards over the last 36 years. She is the immediate Past Chair of the Board of Manulife (2008 to 2013) and was the first Chair of the Board of the Canada Pension Plan Investment Board from 1998 to 2008.

Maureen McCaw
Maureen McCaw is Past Executive Vice-President (Alberta) of Leger Marketing, formerly Criterion Research Corp., a company she founded in 1986. She currently serves as Chair of Edmonton International Airport, is a Director of the Canadian Broadcasting Corporation (CBC), is Chair of the CBC Pension Fund Plan Board of Trustees and serves on the board of Suncor Energy. Ms. McCaw works with a number of community endeavours including the Nature Conservancy of Canada and the Faculty of Business Advisory Council, MacEwan University. She is Past Chair of the Edmonton Chamber of Commerce and is a former Board member of the Alberta Securities Commission.

Larry Stevenson
Lawrence (Larry) Stevenson is Board Chairman of SNC-Lavalin Group Inc., Town Shoes and Logistik Unicorp, and is also Managing Director of is ClearSpring Capital Partners, a private equity firm based in Toronto. Since 1999 he has been Director of Sobeys Inc. and has also served as Independent Director of CAE Inc. from 1998 to 2013. Mr. Stevenson was Chief Executive and Director of Pep Boys Inc. from May 2003 until July 2006 and was elected Chairman of the Retail Council of Canada in 1999 and 2000. He was also the founder and CEO of Chapters and a former managing director at Bain & Company. Mr. Stevenson serves as the Honorary Colonel of the Queen's Own Rifles of Canada.

DIRECTOR PANEL DISCUSSION LEADERS

Osler would like to thank the members of the Institute of Corporate Directors who participated in the cross-country panel discussions in Calgary, Montreal, Toronto and Vancouver. Those directors included Chris Clark, Maureen McCaw and Jane Peverett, who were also director roundtable participants, as well as the following directors and Josh Pekarsky of Longview Communications Inc.

Andre Courville
Andre Courville is currently Chairman and CEO of ICD Quebec. He is also a board member of Uni-Select, Groupe St-Hubert and the Montréal Heart Institute Foundation.

Ian Giffen
Ian Giffen is currently Chairman of Vision Critical Inc, a director of Absolute Software Inc. (ABT.TSX), Kinaxis Inc. (KSX.TSX) and a number of private companies. Mr. Giffen also currently serves on the Board of Trustees of CAMH and on the Board of the Toronto Daily Bread Food Bank.

Denis Desautels
Denis Desautels is a member of the Board of Directors of Bombardier Inc. and Groupe Jean Coutu (PJC) Inc. and also sits on the Board of Governors of the University of Ottawa. He is also a past member of the Boards of Alcan Inc., the Laurentian Bank of Canada (Chair from 2003 to 2013), the International Development Research Centre and the Community Foundation of Ottawa.

Art Korpach
Art Korpach is a corporate director serving on the boards of Canexus Corporation, Freehold Royalties, and HPC Energy Services. He is also the Chair of the Alberta Heart & Stroke Foundation Board and past Chair of United Way Calgary Board. He is a past board member of Mount Royal University and Canadian Oil Sands.

Jean Fraser
Jean Fraser has been an Independent Director of Maple Leaf Foods Inc. since 2014. She is also a member of the Senior Securities Advisory Group to the Chairman of the Ontario Securities Commission and a past member of the Ontario Securities Commission Policy Advisory Committee.

Josh Pekarsky
President of Longview Communications Inc., a communications firm specializing in corporate and financial communications.

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