Risk Management: Buying Into It

All life is the
management
of risk, not its
elimination
— Frederick Wilcox

We took risks,
we knew we took them;
things have come out against us,
and therefore we have no cause for complaint.

Robert Falcon Scott 1868-1912,
English polar explorer
in Scotts last Expedition (1913)

The Greatest Risk

The greatest risk is that organizations like yours and people like you stop taking risks. Nonprofits anchor communities. Our communities, especially their most vulnerable members, need nonprofit organizations to take smart risks on their behalf.

Our goal today is to increase (not diminish) courage among the leaders in this room by helping you create an eyes-wide-open risk plan for the major risks your organization faces.

Leading a nonprofit is not for the faint of heart. It is hard work that often goes unnoticed and unrewarded, at least externally. It requires people who are willing to take risks. Today is not about stopping activities that have the possibility of causing harm or other problems. It is about being smart and disciplined.

Much of what nonprofits do, by their very nature, and given their resources, is risky. Once we start talking about common risks faced by Canadian nonprofits, the “fear factor” can make people start thinking about an exit strategy. That’s not the answer. The answer is to manage the risk, to be diligent about it, and then to relax.

Your community needs you to keep doing what you do. It’s simply a question of doing what you do even smarter. Risk management can without doubt increase your confidence and give you even more courage to lead your nonprofit.

What is Risk?

Risk is anything that threatens the ability of a nonprofit to accomplish its mission.

One way to categorize different risks is to look at the four assets an organization has at risk:

1. People (board members, volunteers, employees, clients/participants, donors, public)
2. Property (buildings, facilities, equipment, contents, important papers)
3. Income (Grants, contributions, contracts, investment earnings)
4. Goodwill (Reputation, ability to raise funds, stature in the community, appeal to prospective volunteers/board members/staff)

A risk for a board member could be a lawsuit flowing from a board decision. A risk for a volunteer could be an accident while driving for a nonprofit. A risk a building could be fire. A risk to office supplies could be theft. A risk of a fundraising activity could be harm to a participant.

What is Risk Management?

Risk management is the ongoing process of:

- identifying risks
- prioritizing risks – which risks require attention now
- responding with a written action plan
- communicating and training the plan
- monitoring its success, making changes where necessary

Risk management must be a group effort, not a top-down "here's what *we* think you should do" memo. The reasons: 1) so it doesn't miss important risks or solutions; 2) buy-in…people are more likely to follow the plan if they helped create it.

The risk management process provides a framework for identifying risks and deciding what to do about them. Of course, just making a laundry list of all possible risks is not enough. It is easy to quickly become overwhelmed by the huge list of risks the organization faces.

But not all risks are created equal. Risk management is not just about identifying risks; it is about learning to weigh various risks and making decisions about which risks deserve immediate attention.

It's a process. Risk management is not a task to be completed and shelved. It is a process that, once understood, should be integrated into all aspects of your organization's management.

Another great definition is printed below. "Active" means it is not a one-time thing. Risk management at its best becomes a part of your every-day decision-making.

Toxic Worry vs. Adaptive Worry

Risk management helps deal with uncertainty. It helps dig and find out the risks you are facing and this information helps to reduce uncertainty and move towards a risk plan. Risk management cannot eliminate (negative) risk, but it can help greatly in managing it.

- Good risk management does not create TOXIC WORRY which is worry that paralyzes you, worry that goes off when it doesn't need to.
- Good risk management DOES create ADAPTIVE WORRY which is like a good fire detector alarm that goes off when it needs to. Adaptive worry is an ally.

Obstacles to Starting Risk Management

At first glance, it doesn't seem fair to load another burden (learn and practice risk management) on nonprofit leaders when they are already working so hard, often without remuneration. But it is crucial that nonprofits understand the *very real* benefits of creating an effective risk management plan.

Nonprofit leaders need to really believe in the benefit of risk management if it is ever to be successful, especially in the long-term as risk management ideas and written policies can take some time to blanket an organization's key risks.

Averaging recent studies, only about 40% of Canadian nonprofit organizations engage in risk reduction activities. And even these 40% have a long way to go in creating and communicating written plans for all of their key risks.

What is keeping most nonprofits from starting? Here are our top 4 obstacles to risk management. Like the Dave Letterman show, let's start with the last one and build from there.

Obstacle #4: "We don't have the skill or knowledge to do this, and we can't afford help"

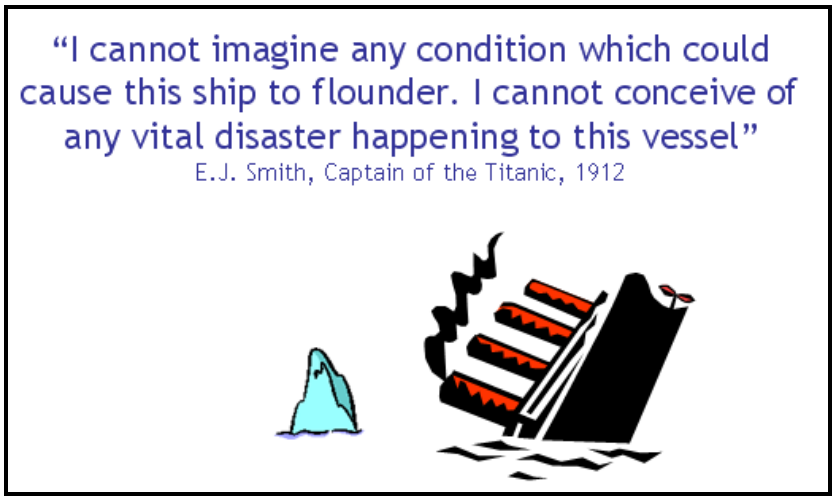
This is an easy fix. You are going to leave here today with the knowledge and resources you need to start or continue successfully. Our Centre is here to help going forward by email or phone (free of charge thanks to the Ontario Ministry of Citizenship and Immigration).

Obstacle #3: "We're fine"

This barrier is decreasing in the face of better communication about the risks nonprofits face and the need to attract board members and staff, who are becoming increasingly more aware of their personal liability. However, it is still the largest barrier for tens of thousands of small and medium nonprofits across Ontario.

Here are examples of the kinds of statements that prevent nonprofits from doing the work of risk management:

- "We're too busy to think about risk management."
- "We're a very small organization. Nobody would ever sue us."
- "Our volunteers have been with us for years. They would never get into trouble!"
- "We've been doing this for 27 years and nothing really bad has occurred yet."
- "We have insurance so we're fine."



There are many problems with these types of statements. One of them is simply that this they create an environment that is ripe for crisis-driven decision-making.

The fact is that accidents happen and misunderstandings occur. Hidden behaviours and dangers are a part of human existence. The failure to recognize this needlessly exposes nonprofit organizations to loss.

Nonprofits need to start by acknowledging that risks exist. They are **not** safe little cocoons. Not-for-profit does not mean not-as-risky!

Obstacle #2: "That's what we have insurance for"

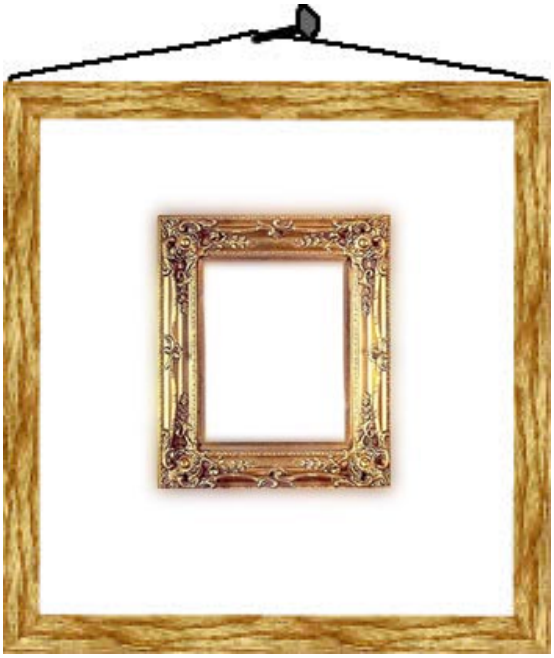
Insurance ALONE will never be able to PREVENT losses (or "bad things" in general) from happening. It's there after the fact.

Risk management, however, *can* prevent a claim from happening in the first place. Any organization that focuses on insurance alone as their risk management plan is missing the big picture. Insurance is the important small picture. Risk management is the big picture.

Risk management goes far beyond just paying for property damage or injuries. It is a commitment to do the hard work to try and prevent the damage or harm in the first place.

Risk management also addresses many risks that are not insurable, including keeping your organization's name in good standing with the public, your funders and, if you are a registered charity, the Canada Revenue Agency.

Bottom line: Insurance is an important but small part of risk management. Insurance is the small picture; risk management is the big picture.



Obstacle #1: "We don't have the time or resources"

Nonprofit leaders have more obstacles to overcome to implement risk management than for-profit leaders. They have limited resources. They are busy. Their time is stretched between all kinds of competing priorities and their most important job is to deliver on their mission.

The answer to this is to see the value of risk management. If the value is clearly seen, then you will somehow find a way to start the process.

At the Insurance & Liability Resource Centre for Nonprofits, we believe that every nonprofit organization, no matter how small or large, whether it runs one event a year or several events a day, whether it has one staff member or a thousand, **should have as its first priority to protect its people.** No matter how wonderful the mission of an organization, if it does not protect its people, it cannot fulfill its mission.

The Benefits of Risk Management: 14 Motivators

One of the biggest challenges to effective risk management in a nonprofit is buy-in from the board and senior staff (e.g., executive director) due to the roadblocks mentioned above.

The most effective way to break through these roadblocks is to provide a clear list of benefits. Here is our list. We hope it will motivate you as you work to motivate others!

We'll be spending much of today looking at the common risks facing Canadian nonprofits today. Assuming that various important risks exist that can cause harm or damage to people and the nonprofit itself, what can risk management really accomplish? It will never eliminate all risk, but it can do the following.

1. **Prevent or reduce harm to your people or damage to their property.** For this reason alone, nonprofits have a moral, if not legal, responsibility to manage risk.

   Nonprofits often have unstable and inadequate funding. This leads to overworked staff and volunteers, who are more prone to mistake. If this is true in for your nonprofit, then you have extra reason to be motivated to manage your risks.

   Risk management reduces the potential for unintentional or unplanned incidents. And if an incident does occur, risk management can reduce its impact.

2. **Prevent or reduce damage to your nonprofits' reputation and public image**. One negative event, even one in which the nonprofit is innocent of any wrongdoing, can destroy decades of good work. Image is often more important than the truth.

   The media has begun to have a greater informal watchdog role.

3. **Help you attract and maintain the confidence of your stakeholders.** This includes board members, volunteers, donors, participants or clients, funders, parent organizations, and the community in which you operate.

Nonprofit organizations need competent, committed board members, volunteers, and staff. Increasingly, such people are aware that their activities on behalf of a nonprofit could leave them open to personal liability. Good risk management practices can help alleviate these fears.

Donors and funders want to invest in nonprofits that are smart about risk. They want to protect their own reputations – and not have their names tied to an organization that attracts negative attention. They also want to protect their hard-earned money – or the public's.

4. **Increase peace of mind.** This happens when a nonprofit organization implements risk management strategies in areas that cause worry or stress to their people (board members, other volunteers, staff, activity participants or clients). Someone (I have not yet found who) said "the greatest leaders deal with their people's greatest fears."

5. **Keep regulators happy.** This is especially important for charities. The Canada Revenue Agency and the Public Guardian & Trustee of Ontario have formal supervisory roles.

6. **Reduce the chance of a lawsuit.** Here are some reasons to be concerned about a lawsuit:

   - Canadians are now more likely to sue if they are harmed or experience property damage. People expect a higher level of service and know what course they can take if they have been wronged.
   - Courts are often sympathetic to injured claimants and give them the benefit of the doubt.
   - Organizations and their leaders are held to very high standards of care.
   - Organizations are being held liable for the actions of their employees/volunteers. This principle is called "vicarious liability."
   - Organizations (yes, even charities and nonprofits) are often perceived as having a lot of assets and/or high insurance policy limits.

7. **Help obtain (or keep) strong insurance coverage at a competitive price**. This is especially true during insurance "hard markets" when nonprofits without clear risk management strategies may find it difficult to find or keep coverage. It stands to reason that insurers are more likely to renew policies and provide strong coverage during hard markets for nonprofits that are deliberate about managing their risks.

   Although it is difficult to find data to back up this statement, the April 30, 2007 *Progress Report of the Atlantic Task Force on Insurance Availability and Affordability* noted that in the last year almost 40% of insurers in the four Atlantic provinces had provided more favourable policy terms for nonprofits that implemented risk management plans.

   The complaint from insurers is that the nonprofit sector often does not take risk management seriously. We have to change this reputation!

8. **Assist in clearly defining insurance needs,** especially as needs and activities change. The ongoing risk management process helps organizations keep their risks front and centre and forces them to think about what would happen if a loss occurred.

9. **Save nonprofit resources.** Time, assets, income, property and people are all valuable resources that can be saved if fewer and less severe losses occur. Mopping up after a loss can be, and often is, a lot of work.

10. **Lessen chance of disruptive investigation.** By preventing a claim in the first place, nonprofit organizations are not disrupted by insurance or police investigations or attorney interviews, and donors and volunteers will continue to believe that scarce resources are put to good use. Nonprofits that have been through this talk about how difficult those days were.

11. **Inform decision-making.** Risk management provides a clear and structured approach to identifying risks. Having a clear understanding of key risks allows an organization to measure and prioritize them and take the appropriate action to reduce losses and look for ways to move forward.

12. **Reduce uncertainty.** Knowing what might happen increases the stability of the nonprofit and the confidence of its decision-makers. Reduced psychological uncertainty among leaders makes them more confident in moving forward. Having a risk plan means simply that the nonprofit is far less in danger of shutting its doors or closing down an important activity because of a surprise loss.

13. **Risk management may be a valid defence in a lawsuit.** See box on next page.

14. **Risk management may be a valid defence in a lawsuit EVEN if your volunteer or employee did NOT follow your policy.** Risk management policies that are regularly adhered to may even assist in a situation where staff or volunteers don't follow the policy and cause harm or damage. See box on next page.

Slip and Fall Lawsuit Against Ontario Grocery Store

The August 2007 edition of *Canadian Underwriter* includes an article entitled "Careful not to slip." The article notes that a recent Ontario Court of Appeal ruling suggests that an established risk management practice, *even if it is not perfectly followed,* can help protect against litigation related to slip-and-fall injuries.

An 80-year old customer had slipped on a grape in a Zehrs grocery store in Barrie, breaking her ankle in three places and straining her knee. Loblaws (which owns Zehrs) denied liability on the basis that it had taken reasonable steps to see that its customers were reasonably safe on store premises. They also argued that the customer had pre-existing and deteriorating medical conditions and events.

Working against them were two facts: (1) the store did not have its regular floor mat in front of the grape display the day of the accident; and (2) the store manager had not reviewed the store's floor care policy manual.

The Court of Appeal ruled in favour of Loblaws, upholding the original ruling. It gave three reasons for its decision: 1) there was evidence that Zehrs had a detailed floor maintenance program in place; **2)** there was evidence that Zehrs' produce employees regularly checked the floors and removed any fallen items; **3)** there was no evidence that accidents from fallen grapes were a recurring issue at this store or that employees took their maintenance and inspection duties casually.

The lawyer, David Lauder, observed that although documentation is the best way to show that steps were taken to minimize risk, the Court of Appeal made it clear the verbal testimony of employees can also be used as evidence. Grocery stores aren't guarantors of people's safety, Mr. Lauder stated. Their obligation is to take reasonable steps to make sure that people are reasonably safe. He calls this "the double reasonableness standard."

"The standard of care that most jurors expect when they apply their common sense is "far from perfection," said another lawyer Todd McCarthy. "What is important . . . is to show the jury a system, if not a perfect system, a system that is carried out and that demonstrates reasonable care. Perhaps not perfect care, but reasonable care."

Although we cannot assume that this slip-and-fall lawsuit is a perfect example for how a court would look at any liability case, it certainly gives an excellent example of the value of a risk management plan, even one that isn't followed perfectly!

What is <u>your</u> “slippery grape”?

The “slippery grape” (customers falling on slippery floors) is one of the biggest risks faced by grocery stores. They certainly face other risks, but slip and falls have been determined to be their most significant risk. In response, they engage in significant risk management in this area.

Two factors – frequency and severity – help determine how risky each of your risks are:

1. **Frequency:** Is there a good chance of this risk happening?
2. **Severity:** Is there a good chance of having severe consequences for people (client falling), reputation and income (because of lawsuit)?

Question: What is your nonprofit’s “slippery grape”? Is it board issues, volunteer management, transportation, special events, alcohol, partnerships with other nonprofits, vulnerable clients?

That’s where we’re going next: risks that are common to many nonprofits. We’ll look at the risks and a few SmartTips we believe will assist you in meeting these successfully.