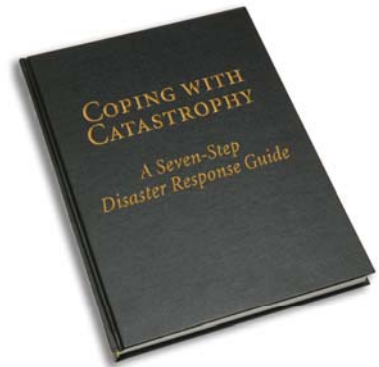


Your company's laptop battery is exploding. Gigabytes of customer data have gone missing. Someone has leaked a copy of your latest children's bestseller. Corporate counsel are command central for crisis management, and there's never been more pressure on them to get the company's response right. Here's a seven-step disaster response guide.



Coping with catastrophe

By Julie Stauffer

Shortly after the massive blackout of 2003 shut down much of Ontario and the northeastern United States, Scott Bates's telephone rang. It was one of those calls that corporate counsel dread: when the power went out, he was informed, a company plant may have leaked toxic chemicals into the St. Clair River.

"You sort of get that hole in the bottom of your stomach," recalls the general counsel of Royal Group Inc., a subsidiary of Georgia Gulf Corporation. Leaving a darkened Toronto behind, Bates and the company's media spokesperson raced to the site of the Sarnia, Ontario spill to deal with regulators, media, and a community facing the possibility of contaminated drinking water.

Like any good boy scout, organizations should be prepared for fortune's slings and arrows, whether they take the form of a toxic spill, accusations of insider trading, loss of confidential data, on-the-job injuries, or a million and one other possible disasters. Corporate reputation, sales, customer loyalty, and stock price all hang in the balance.

According to a recent PriceWaterhouseCoopers survey, nearly half of U.S.-based multinationals suffered a high-level crisis between 2003 and 2006 — that is, an event significant enough to have a catastrophic impact on at least one major business unit or process.

Doing business has always carried risks, but today, a number of factors have driven the odds higher than ever. In the globalized economy, supply chains

often stretch around the world, leaving corporations vulnerable to any weak links, while outsourcing removes direct control over the quality of parts and services.

At the same time, companies are being held to higher standards of corporate governance and scrutinized more closely in the wake of Enron, WorldCom, and a host of other headline-grabbing scandals. Now add in litigious consumers increasingly likely to turn to class action suits in response to any inconveniences or damages they suffer, and a wired environment where blogs, websites, social networks, and a 24-hour news cycle can galvanize public opinion overnight.

If you're not geared up to face a crisis — and 66% of respondents in the PriceWaterhouseCoopers survey admit to being at least moderately concerned about their level of preparedness — it's time to take action.

1 Identify and minimize risks

The first step is to identify and minimize the major risks your company faces. While you can't predict everything, you can pretty easily figure out the key issues in your industry.

"When one pharmaceutical company gets sued over a drug, it doesn't take a lot of forethought to see that if you're a pharmaceutical company, it may be that you're going to be hit by a class action on one of your drugs as well," says Barbara Grossman, a senior litigation partner at Fraser Milner LLP in Toronto.

If your organization gathers credit card information, social insurance numbers, health records, or any other kind of sensitive data, the risk of privacy breaches should be top of mind. And if your company manufactures just about anything, last year's stories of tainted pet food, lead-laced paint on children's toys, and lap-top batteries bursting into flame should spur you into recall readiness.

Then there are general risks common to all businesses: internal fraud, non-compliance, workplace harassment, and corporate governance issues. Do your staff and directors understand their obligations? Is the proper oversight in place?

2 Have a plan ready

Next, consider how to react if any of these situations come to pass. "Once a crisis occurs, it's too late to be developing your response," says Bates.

For example, when the latest installments of the Harry Potter

saga were delivered to bookstores amidst a worldwide fever of anticipation, leaks presented an obvious threat to the embargos imposed before each launch. Grossman was part of the international team charged with muzzling would-be spoilers.

An "emergency kit" developed by the U.K. publisher's in-house counsel proved invaluable. It included protocols for writing initial letters, essential information that could be easily converted to affidavits, and a clearly delineated process for approving legal action. Internet monitoring experts were on call, ready to track down on-line violators, while media relations firms contacts hovered in the wings.

As situations developed in the days and hours leading up to each launch, in-house counsel updated the kit. As a court order was obtained in one jurisdiction, for example, the precedent was immediately sent to other jurisdictions where similar orders were required.

So when 14 copies of Harry Potter and the Half-Blood Prince were sold in B.C. before one official launch, Grossman and her team were able to swiftly obtain a court injunction preventing buyers from disclosing plot details. "You're able to react in a very speedy fashion and get the judicial relief you need, and get it all in a very timely way before the cat's out of the bag and the damage is done," she says.

3 Assemble your team

While not every crisis is as predictable as leaks of the latest Harry Potter plot, advance planning will serve you well when disaster strikes.

“**Every crisis is a Shakespearean tragedy: there's a hero and a villain. And if you're not the hero, guess what role you get to play?**”

Richard Levick
Levick Strategic Communications, Washington, D.C.

Decide on the roles key staff should play in a crisis, make sure they have adequate training, and lay out lines of responsibility and communication. Who should authorize a particular action? Who needs to be kept in the loop?

"When time is short, you have to be able to communicate and get instructions

in the most efficient fashion," says Grossman. In-house lawyers are well positioned to serve as command central, helping to coordinate the various initiatives and communicate with regulators, in-house personnel, and external service providers.

Once your internal team is in place, line up the outside vendors that you may need to call on, such as PR experts, external counsel, and government relations specialists. Have backups as well, in case an unforeseen conflict of interest prevents your regular provider from acting for you.



Barbara Grossman
Senior Litigation Partner, Fraser Milner LLP
Toronto

Don't wait until a crisis hits to send out an RFP. It takes time to build the trust and develop the effective working relationships that are vital in a crisis. A crucial point is to have 24/7 contact information for key internal and external people. "Most bad things seem to erupt on a Friday, and by a Monday a lot has happened," says Grossman.

In these situations, modern technology can be both a blessing and a curse. If the right people can be reached, conference calls, e-mail, and faxes let you accomplish a lot within the space of 48 hours. Conversely, Grossman recalls one case that escalated to legal action because no one with decision-making authority could be reached over a weekend.

4 Develop protocols

Hammer out basic templates that you can quickly adapt to specific situations as they arise. Will you need to inform regulatory authorities? How will you reach out to customers or a wider public affected by the crisis? Should you call in outside counsel? What will your insurance policies cover?

Give some thought to questions like how to preserve privilege if you bring in a PR firm or an external investigator, what kind of document and information retention policies to follow, and how to deal with multi-jurisdictional issues. And while some crises are self-evident, decide what circumstances should trigger your plan. It's not always clear, for example, when a privacy breach has occurred.

"If you've sent data on a CD-ROM or a tape for processing

and it doesn't show up when expected, does that mean there's been a breach or not?" asks Christine Carron, a senior partner at Ogilvy Renault LLP in Montreal and a member of their Recall and Crisis Management group. "How long do you have to wait to find out whether FedEx can locate it before you react?"

Spending time now to work through all these details is well worth the investment, Carron says. "You need to know who within the organization is the right person to contact, where to find your insurance policies, who your brokers are, what principles apply with respect to protecting privilege," she explains. "You don't want to be scrambling around for that information at the last minute."

Once your plan is finished, rehearse it. Crisis simulations will pinpoint any weaknesses in your strategies and provide valuable practice in acting under fire. Don't forget to update your plan regularly as people and operations change.

5 Prepare your PR

An essential component of any plan is a strategy for protecting your corporate reputation. "Every crisis is a Shakespearean tragedy — there's a hero and a villain," says Washington, D.C. public relations guru Richard Levick of Levick Strategic Communications. "And if you're not the hero, guess what role you get to play?"

Levick advocates bulletproofing your brand through proactive measures that include developing relationships with powerful people in your industry. "There's an old saying in the business:

'Know 'em before you need 'em,'" he explains. "Who are the third parties, the academicians, the politicians, the competitors who would say good things about you in a crisis?"

Cultivate key reporters as well — not just those who write about your particular industry, but the ones who cover regulatory issues, government affairs, and the legal beat. But don't ignore the growing power of the blogosphere.

Identify the high-authority bloggers in your industry and track what they're saying. These aren't just techno-geeks with too much time on their hands. They may include your customers, your critics and your employees, and they often serve as a first source of information for journalists. "They're the ones who are going to influence the stock price," says Levick. "They're the ones who are going to decide if a story is a story."

Now is also the time to invest in strategic search engine optimization. When disaster strikes, you don't want your critics' websites ranking first on Google. Consider developing so-called "dark sites" — web pages created in advance to address particular crises that can be posted up as the need arises.

6 Exhibit grace under fire

So what do you do when you get that dreaded phone call? Assemble your team, pull your plan off the shelf, and stay as dispassionate as possible. "People tend to look at legal

counsel as the calm, rational mind," says Bates.

Start by determining the scope of the problem. Has a spill actually occurred? Is a recall required? Get all the information you can, but be prepared to act before you have the full picture. In a crisis, minutes and hours count.

When it comes to disclosing information, pull the Band-Aid off quickly. Leaking bad news bit by bit simply guarantees the story will appear in the headlines day after day. Prompt communication also forestalls speculation among employees, investors, and community members.

Whenever possible, avoid the infamous "no comment" response. "Not coming forward to a reporter is like blood to a piranha," says Levick. Offer assurances, not excuses, and provide a clear, consistent message that emphasizes concern and compassion.

And while legal savvy plays an important role in a crisis, your strategy should be brand-smart as well as litigation-smart. A lawsuit may cost your company millions of dollars, but your corporate reputation can be worth billions.

7 The calm after the storm

Once you've weathered a crisis, resist the temptation to simply move on and put it all behind you. Instead, conduct a detailed debriefing. What worked well? What could have been improved? What damage has the company incurred?

Affronter le pire

En cas de crise, la pression est forte sur les avocats-conseils pour qui la marge d'erreur est mince. Voici sept étapes pour s'y préparer.

Une étude menée récemment pour Price WaterhouseCoopers démontre que près de la moitié des multinationales basées aux États-Unis ont subi une crise de grande envergure entre 2003 et 2006.

Les affaires ont toujours comporté leur part de risques. Mais nombreux facteurs peuvent venir les exacerber. La sous-traitance, par exemple, complique le contrôle sur la qualité. Dans la foulée des scandales à la Enron, les entreprises ont été assujetties à des normes plus sévères. Puis les consommateurs sont plus portés vers les tribunaux et les recours collectifs. Et les médias peuvent galvaniser l'opinion publique en quelques heures.

Avis aux entreprises qui ne sont pas préparées à faire face à une crise — soit 66 %

des multinationales sondées — il est grand temps d'agir.

1 Identifiez et minimisez vos risques

La première étape est d'identifier et de minimiser les risques majeurs, qu'ils soient spécifiques à votre industrie ou communs à toutes les entreprises. Fraude, harcèlement, recours collectifs... Les dirigeants comprennent-ils leurs obligations? La supervision est-elle adéquate?

2 Un plan prêt à être activé

Pensez à la manière dont vous réagiriez si l'un de ces problèmes survenait. « Lorsque la crise frappe, il est trop tard pour faire un plan », précise Scott Bates, avocat du Royal Group.

Il a lui-même dû faire face à une situation de déversement de produits toxiques.

Barbara Grossman, associée senior en litige chez Fraser Milner LLP à Toronto, faisait partie de l'équipe internationale d'avocats qui ont planifié la sortie du dernier livre Harry Potter. Les avocats-conseils en Angleterre avaient préparé une « trousse d'urgence », pour affronter les risques de fuite avant la levée de l'embargo. Cette trousse comprenait notamment des lettres, des informations susceptibles d'être converties rapidement en affidavit et un protocole d'approbation rapide de poursuite.

Ainsi, lorsque 14 copies de *Harry Potter and the Half Blood Prince* ont été vendues en Colombie-Britannique avant une lancée officielle du livre, Me Grossman et son équipe ont pu obtenir une injonction sans

In the case of the Sarnia spill, Bates points to all that the Royal Group did right: notifying the authorities, being frank with the community, and providing bottled water until it was clear that the local tap water was safe to drink. Most importantly, nobody was harmed as a result of the spill.

However, the company faced criticisms that it could have responded faster. As a result, it created protocols to speed up internal decision-making and improve community interactions. “We did well, but we took our learnings and would do better next time,” says Bates.

And chances are good that, despite all the steps the company takes to minimize its risks, including regular third-party assessments of its plants, there will be a next time, somewhere down the line. “Crises occur,” Bates says. “That’s the nature of business.” The key is being prepared. ■

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Christine Carron
Senior Partner
Ogilvy Renault LLP
Montreal

attendre afin d’empêcher les acheteurs de révéler les détails de l’histoire.

3 Assemblez votre équipe

Décidez du rôle des employés clés en cas de crise et assurez-vous qu’ils ont la formation nécessaire. Établissez un réseau de personnes — ressources à l’externe : spécialistes des relations publiques, consultants en relations gouvernementales... Un point crucial est de pouvoir contacter toutes ces personnes 24 heures sur 24, et sept jours sur sept.

4 Développez des protocoles

Établissez une marche à suivre pour répondre à des situations précises. « Vous devez savoir qui dans votre entreprise est la bonne personne à contacter, où trouver les polices d’assurance, qui sont vos courtiers », indique Christine Carron, une associée senior au cabinet montréalais d’Ogilvy Renault. Me Caron est membre du groupe de gestion de crise de la firme.

5 Préparez vos relations publiques

Une stratégie pour protéger la réputation de votre compagnie est essentielle. Le guru des relations publiques Richard Levick, de la firme Levick Strategic Communications de Washington D.C., insiste sur l’importance de préparer le terrain à l’avance.

« Il y a un vieux dicton dans le domaine qui dit : “Connaissez-les avant d’avoir besoin d’eux, dit-il. Qui sont les tiers, les universitaires, les politiciens, les compétiteurs qui pourraient dire du bien de vous en temps de crise? »

De cette manière, cultivez vos relations avec des journalistes de tout acabit, incluant des blogueurs. Il est aussi utile d’investir dans certaines technologies, comme l’achat de sites web qui pourront être activés pour des besoins potentiels.

6 Restez calme

Arrive le jour J. Que faire? Assemblez votre

équipe, puis sortez votre plan. Chose importante : restez le plus calme possible en déterminant l’ampleur du problème.

Pour l’information, utilisez la technique du pansement qu’on arrache d’un coup sec : montrez le bobo tout de suite. De l’information fournie au compte-gouttes est le meilleur moyen d’étirer les manchettes sur plusieurs jours.

7 Le calme après la tempête

Une fois la crise traversée, résistez la tentation de simplement passer à autre chose. Faites un post-mortem. Qu’est-ce qui a bien marché? Qu’est-ce qui pourrait être amélioré? Quels sont les dommages infligés à la compagnie?

Car malgré toutes les précautions prises, il pourrait très bien avoir une prochaine fois. « Les crises surviennent, note Scott Bates. C’est dans la nature des affaires. »

La clé est d’être bien préparé. ■

— Yves Faguy