

Older Adult Centres' Association of Ontario 2009 Conference



Risk Management Workshop

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Principles of Risk Management

- The International Organization for Standardization identifies the following principles of risk management:
- Risk management should...
 - create value.
 - be an integral part of organizational processes.
 - be part of decision making.
 - explicitly address uncertainty.
 - be systematic and structured.
 - be based on the best available information.
 - be tailored.
 - take into account human factors.
 - be transparent and inclusive.
 - be dynamic, iterative and responsive to change.
 - be capable of continual improvement and enhancement

Defining Terms: Wikipedia

- Risk management is the identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events. Risks can come from uncertainty in financial markets, project failures, legal liabilities, credit risk, accidents, natural causes and disasters as well as deliberate attacks from an adversary



Risk Management

- Set of controls used to minimize the financial, reputational and legal risks faced by organizations

- Components include
 - Application of Principles of Good Governance
 - Document Management
 - Insurance
 - Papering and monitoring arrangements with 3rd parties (service providers, employees, volunteers, landlords, tenants)
 - Obtaining expert advice where needed (insurance agents, accountants, lawyers)



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Boards and Principles of Good Governance

Board of Directors

- Boards are the “stewards” of a corporation
- Establish a direction for the corporation (through policies, strategy), hire managers, ensure through audit and oversight that corporation meets financial and other goals

Authority of the Board

- Legislation (statutes & regulations)
- Letters patent & bylaws
- Organization (officers)
- Policies
- Rules of order (for conducting a meeting)

Duty of Board

- Pass bylaws
- Appoint officers and auditor
- Hire and evaluate performance of the CEO
- Appoint committees
- Approve material changes
- Receive financial statements
- Ensure organization complies with law, bylaws

- Challenge is how to govern w/o “micro-managing”

Good Governance

- Increasing focus on governance as a result of failures of public companies and understanding of cost to society
- Post-Enron the role of the Board has been studied, legislation (for example, requiring disclosure) amended or passed and “best practices” identified



Behaviour/Performance Standards

- Boards increasingly held responsible for establishing ethical standards for their organization
- Standards set through establishment of performance measures for senior management & codes of conduct



Board Process

- To make appropriate decisions, boards must have information, follow a defined process and exercise business judgment
- Key components of board process are independence and due diligence



Duty of Directors

- Each director is subject to:
 - a fiduciary duty (to act honestly, in good faith & in the best interests of the corporation) and
 - a duty of care (to apply the level of skill and judgment that may be reasonably expected of a person with their knowledge and experience)

Expectations of Directors

- DO NOT act if in a conflict of interest
- DO NOT appropriate a corporate opportunity
- DO protect confidential information

Conflict of Interest

- Directors must not act in circumstances in which their interests are at odds with those of the organization:
 - becoming a service-provider w/o disclosure & approval
 - appropriation of a corporate opportunity
 - misuse confidential information
 - over-step authority



Protection Against Personal Liability

- Directors may be personally liable for acts/omissions of the organization
- Directors generally not accountable for errors of judgment IF they have followed a reasonable process, including doing due diligence (Business Judgment Rule)
- No liability for act done in good faith in the execution of duty or authority under PHA

Protection Against Personal Liability

- Indemnification by organization/D&O insurance
- Directors may assume management has behaved honestly unless faced with evidence to the contrary



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Tools – Guidelines/Policies

- Guidelines have been developed to facilitate effective corporate governance
- Create policies and ensure compliance

Tools - Committees

- Nominating, compensation and audit committee to assist with key decisions
- Audit committee – to assist Board in oversight responsibilities relating to financial accounting, reporting process and internal controls
- Audit committee members should be independent from management

Tools - Self-Evaluation

- Board should regularly evaluate its effectiveness and contribution and that of individual directors

Summary - Best Practices for Boards

- Establish qualifications for directors & board
- Orientation for new directors – role of directors vs managers
- Continuing education for all directors (establish core competencies?)
- Adoption of written code of ethics & standards of organizational behavior



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Best Practices

- Appoint nominating, compensation and audit committee to assist with key decisions
- Develop qualifications & performance criteria for senior management
- Create reporting requirements for senior management

Best Practices

- Evaluate board & directors as well as managers
- Make changes – reallocate resources – where necessary



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Last Word on Boards

- Board sets “tone from the top”
- Ability to greatly influence the culture of an organization
- Diminishing gap in standards of governance expected of boards of publicly financed and not-for-profit organizations and business corporations



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Document Management



Record Retention & Destruction

- Arthur Andersen & Enron: obstruction of justice charges arising out of document shredding
- Worldcom: lawyer appointed to prevent shredding of key documents prior to proceedings for alleged securities fraud
- BAT (Australia): trial judge strikes out defence finding BAT subverted discovery process by shredding relevant documents – new trial ordered on appeal

Retention/Destruction

- 3 Sources of Authority for Records Retention
 - statutory retention periods
 - recommended retention periods, guidelines, best practices (e.g. – policies of a regulator or privacy commissioner, industry standards)
 - limitation periods (in legislation & contracts)

- Mandated retention periods differ from jurisdiction to jurisdiction & nature of records

Electronic Information/Security

- Security Breaches
 - ChoicePoint, Lexis Nexis
 - Bank of America, HSBC, CIBC
 - Winners/HomeSense
 - Time Warner
 - Boeing, Ford, FedEx
 - H&R Block
 - Government of BC
 - Federal Government
 - Hospitals/Universities/Service Providers



Document Management

- Protect ability to pursue or defend litigation
- Reduce the likelihood & cost of litigation
- Reduce the likelihood of inappropriate access, use and disclosure & complaints
- Reduce costs (only retain what is needed)
- Monitor through audits
- Method of destruction geared to sensitivity of information

Outsourcing of Data Management

- Outsourcing: need agreement that addresses security, liability & insurance, among other issues
- Need to review decisions to outsource to jurisdictions where different level of protection afforded under the law



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Insurance



Know What is Covered

- Do not assume coverage (for example for privacy breaches)
- Know the limits of general liability insurance
- Verify that amount of coverage appropriate
- Track claims and make changes based on experience
- If in doubt – consult insurance company



Third Parties

Agreements IP Real Property Employees/Volunteers



Agreements

- Ensure that arrangements with third parties are recorded
- Ensure that third party has insurance and consider requiring indemnification
- Ensure that there is an exit in every contract (for convenience)
- Monitor contracts for performance and for expiry (be wary of automatic renewal provisions)

Intellectual Property

- Rights in and to various kinds of property
- Ensure that provider represents that it has the right to sell/license IP
- Indemnification if breach of 3rd party IP
- Ensure that provider's liability is not limited in relation to breach of 3rd party IP
- Consult lawyer if in doubt

Real Property

- If lease – monitor and ensure that there is an exit (transactions involving real property must be in writing)
- Ensure there is adequate insurance
- Consult experts – particularly if buying property regarding zoning, title, improvements
- Consider cost of maintenance
- Attend to deficiencies

Employees

- Vicarious liability for employees
- Ensure insurance coverage
- Train employees – ensure they are aware of corporate policies
- Evaluate performance
- Consider employment/confidentiality agreements



Volunteers

- Management of volunteers more difficult
- Tension between making demands and getting assistance
- Assign responsibility for volunteers to a designated individual
- Establish rules of conduct
- Ensure that volunteers undergo orientation



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Fiscal Management

Tools

- Board appoints auditor each year
- Appoint finance/audit committee
- Try to attract individuals with accounting or other relevant experience to the Board
- Stage projects – make payments in instalments rather than lump sum in advance of delivery
- Do not be afraid to ask questions



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