

**25<sup>th</sup> McMaster World Congress:  
Corporate Governance:  
What the CEO Should be Aware of:  
Current & Emerging Trends**

**Jay N. Rosenblatt, Partner**

January 15, 2004

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***You may not be an Enron, Worldcom or Hollinger International, but there is still liability!***

▣ **Who Cares!**

▣ **Why Me!**

# What Me Worry? Why Me Worry?

- The nice thing about not planning is that failure comes as a complete surprise and is not preceded by a long period of worry and stress!

David Parsons, Sydney Water, Australia



E.C. Publications, Inc.

- Worry a bit now **OR** Worry a lot later! Jay N. Rosenblatt

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# What we will cover

- ❏ **Introduction**
- ❏ **Corporate Governance**
- ❏ **Governance & Risk Management**
- ❏ **Current & Emerging Trends, Issues**
- ❏ **Standards of Care**
- ❏ **Who's at risk? (Identification)**
- ❏ **What's at risk & why? (Evaluation)**
- ❏ **Due Diligence (Standard of Care)**
- ❏ **Summary**

# Who we are



**Simpson Wigle LLP: is a business law firm with offices in Hamilton & Burlington;**



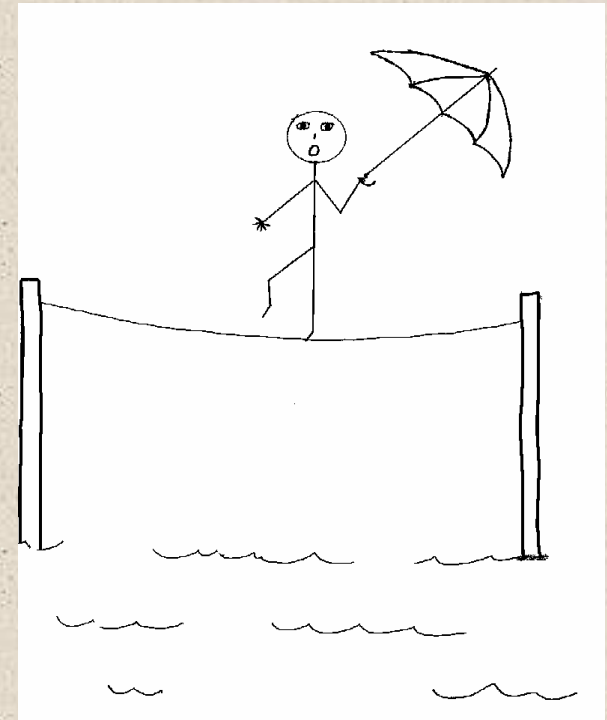
**Jay Rosenblatt: is a Business & Technology Partner at the Firm, providing counsel & solutions to businesses in general, and to technology companies and companies enabled by technology; founder of the Golden Horseshoe Venture Forum ([www.ghvf.org](http://www.ghvf.org)); goal of advancing the business community's understanding of corporate governance & privacy;**

# What is Corporate Governance?

## Corporate Governance:

**DOING IT RIGHT FOR ALL THE STAKEHOLDERS!**

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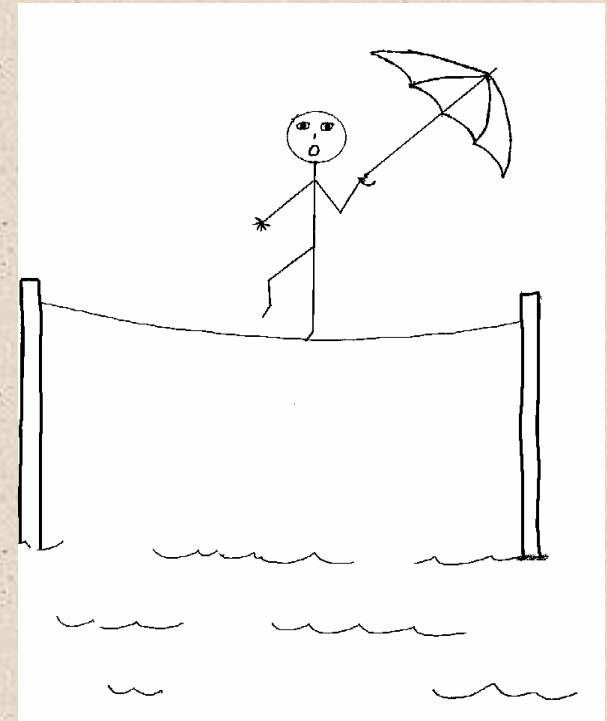
# What is Risk?



## Risk:

**“Likelihood, chance or possibility of danger, loss, injury, and the negative consequences of same.”**

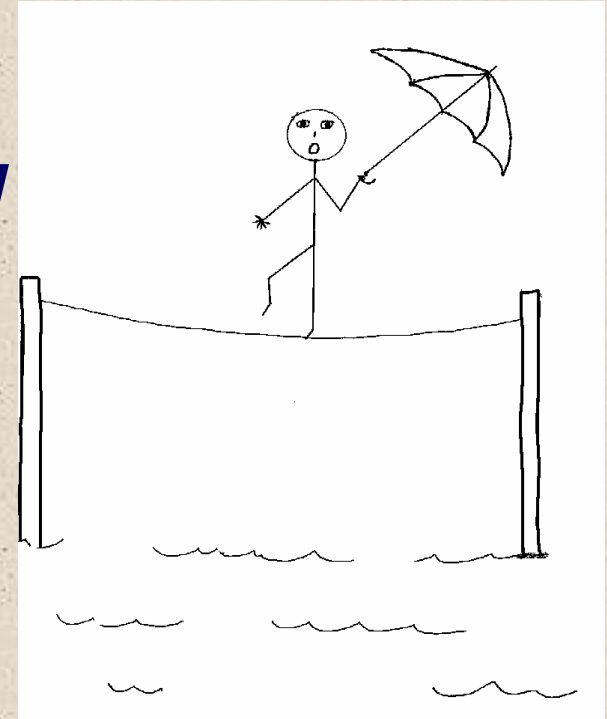
Jay N. Rosenblatt



# What is Negligence?

## Negligence:

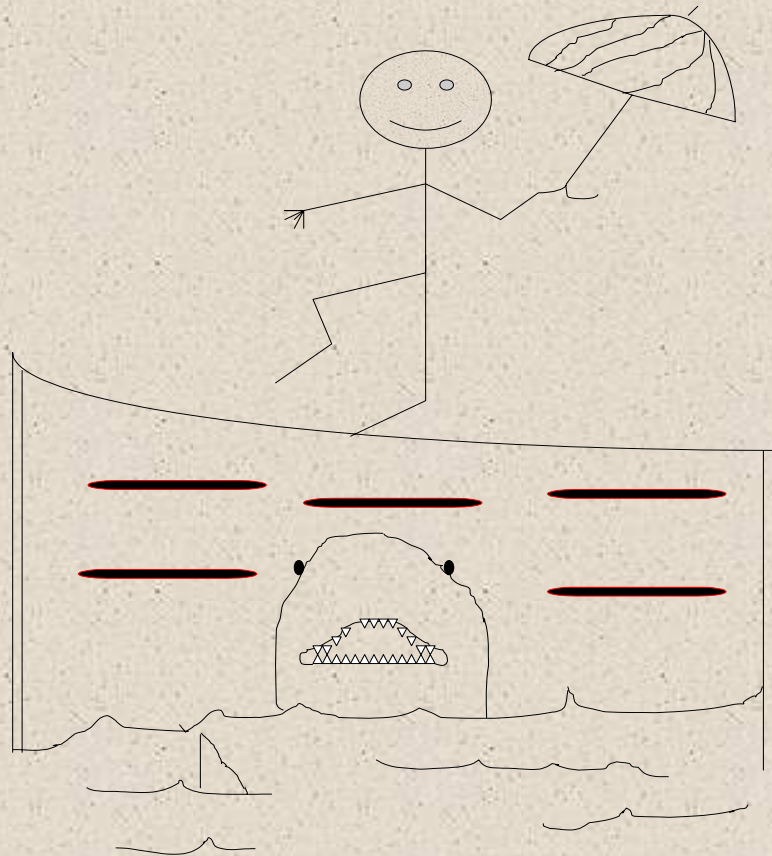
- ❏ a failure to do what a reasonably careful and reasonably prudent person would do in the given circumstances;
- ❏ the relation is such as to produce a risk of foreseeable harm, creating a duty of care, and the degree of care is not taken.



# Emerging Trends

- ❏ **Privacy (PIPEDA)**
- ❏ **Health Information Protection Act**
- ❏ **C-45 (Criminal Code)**
- ❏ **OBCA & CBCA**
- ❏ **Ontario Securities Act**
- ❏ **Workplace Safety (OH&SA)**
- ❏ **Disaster/Emergency Management**
- ❏ **I.D. Theft/Social Engineering**
- ❏ **Environmental**

# Risk Management/Due Diligence: **DEFEND YOUR BUSINESS & YOURSELF!**



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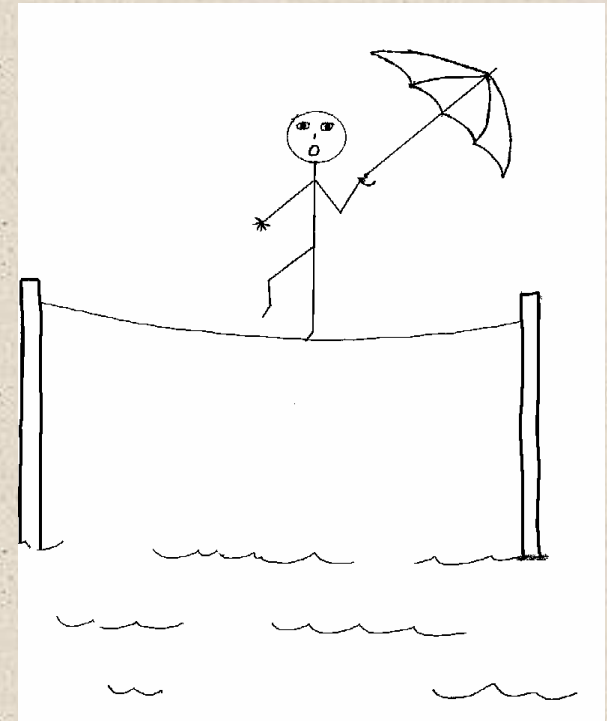
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# A Wake Up Call!

**THIS COULD APPLY TO YOU!:**  
**CEO & Board Members**  
**charged with ...!"**

**Your Local Newspaper (Some Time  
Soon)**

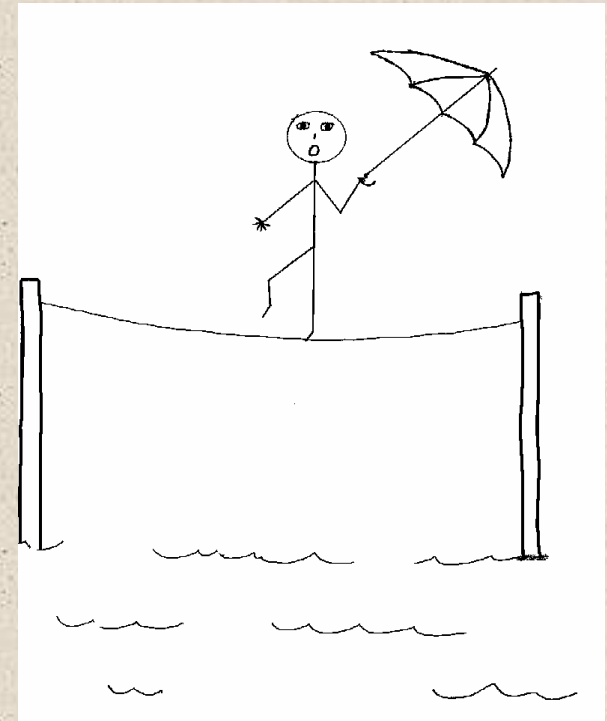


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# Who's at risk?

- ❑ Shareholders
- ❑ Directors/Officers/Sr. Managers
- ❑ Human Resources/Employees
- ❑ Customers
- ❑ Suppliers
- ❑ Lenders/Investors



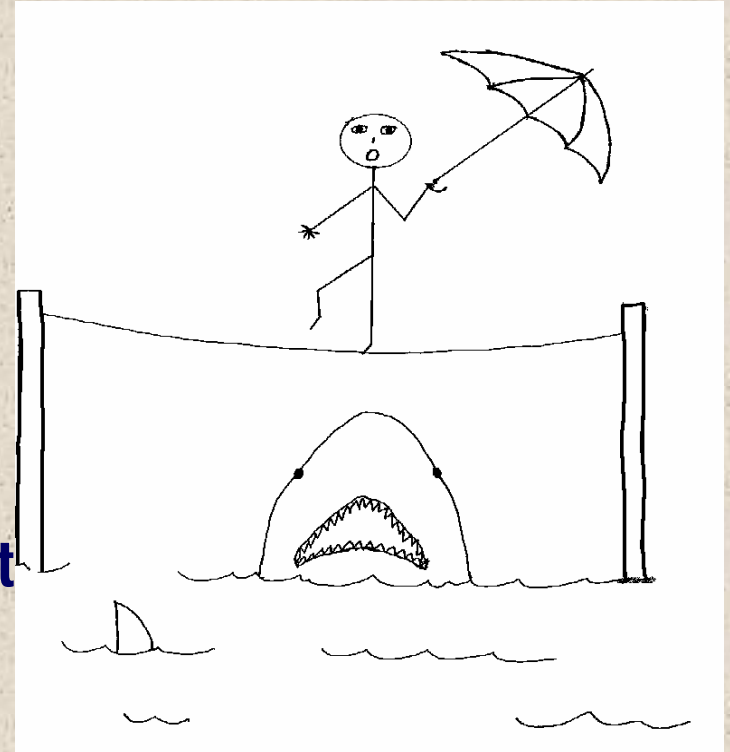
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# What's at risk & why?

- ❑ Your Business!
- ❑ Financing Your Business
- ❑ Profits
- ❑ Access to your Business
- ❑ Legal exposure
- ❑ Publicity: Reputation Management
- ❑ Competitive advantage
- ❑ Regulatory compliance
- ❑ Insurance: availability/premiums
- ❑ Internal risks
- ❑ External risks



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# What's at risk & why?: Access



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# What's at risk & why?: Access

The Blackout of 2003 August:  
Remember When the Lights Went Out?  
What will you do when the go out again?










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# What's at risk & why?

## Legal Exposure

-  **Lawsuits = Damages = Costs + +**
-  **Torts & Contracts**
-  **Privacy (PIPEDA)**
-  **Regulatory Compliance (OSA)**
-  **Criminal: C-45**
-  **Health Information Protection Act**
-  **Employees and Third Party Outsourcing**

# What's at risk & why?



## Financing

- Will you get it, & If so, how much will it Cost?



## Publicity: Reputation Management

- Bad news is *BAD NEWS!*



## Competitive Advantage

- Do better than your competition
- Customer relationships/loyalty



## Regulatory Compliance

- The right to operate!



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# What's at risk & why?

## Insurance

-  Availability

-  Premiums

## \*\*\*Privacy

-  Compliance

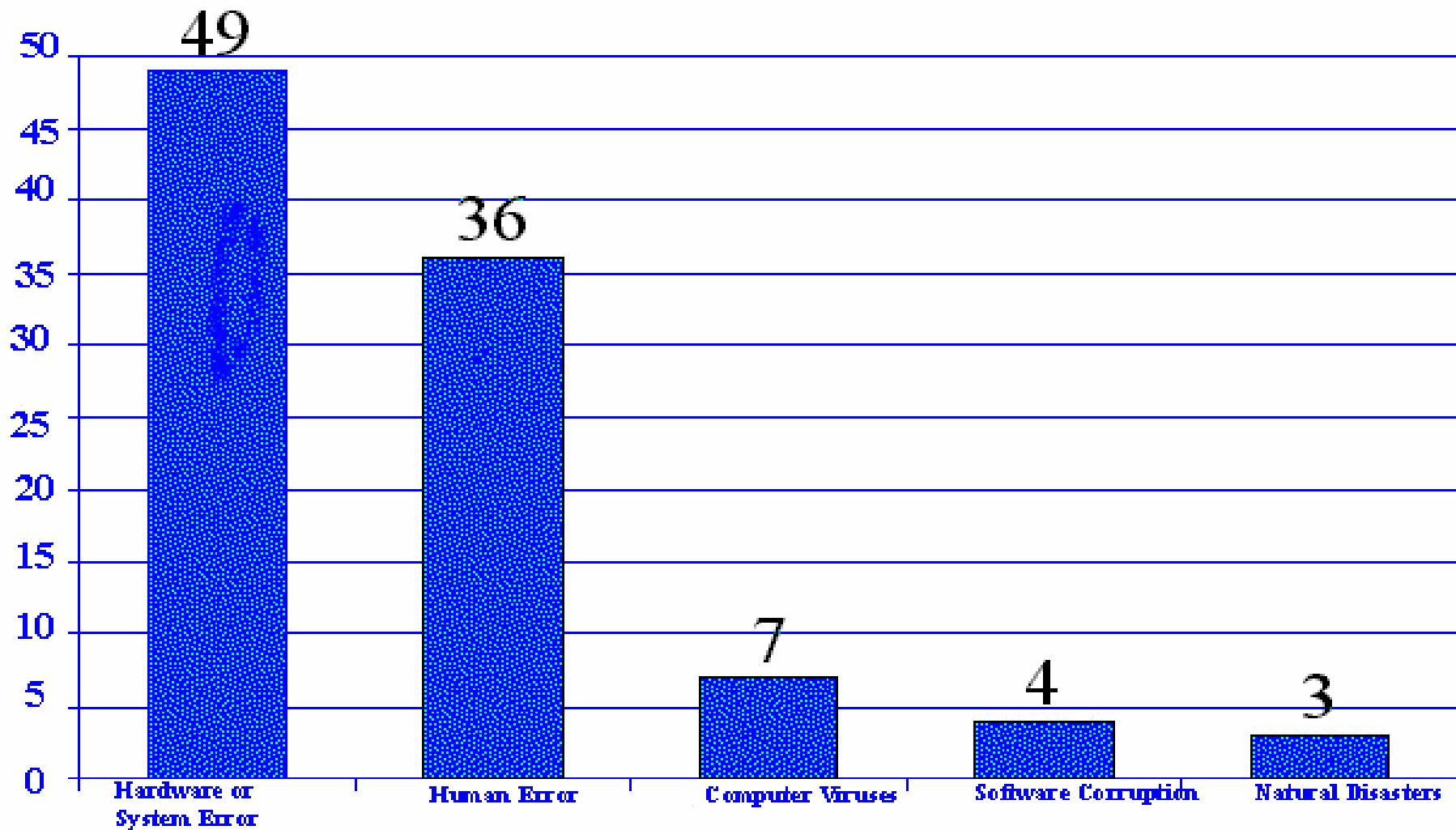


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# Causes of Failures



Oracle Corporation

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# What's at risk & why?

## Internal Risks

### **\*\*Your Employees!**

### **High Risk/High Cost\*\***

- Hiring/Firing
- Vicarious Liability
- Business Continuity
- Theft of I.P., I.D., Confidential Information & Equipment
- Sabotage
- Pirating of SoftWare

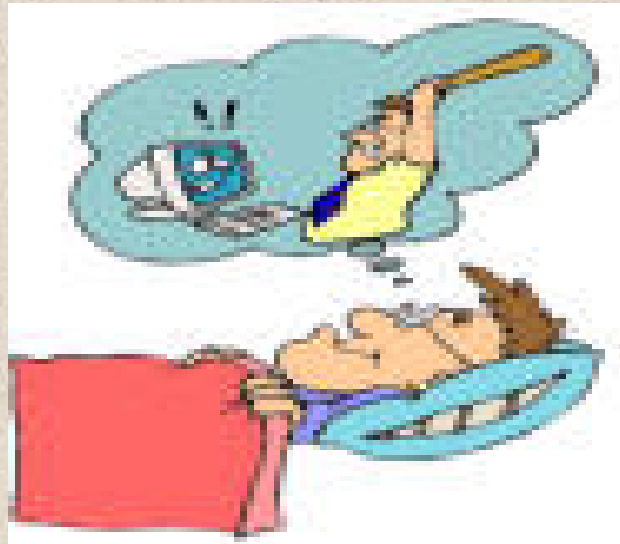
# What's at risk & why?



## Hiring/Termination management

- ❑ ***\*\* High Risk/High Cost \*\****
- ❑ **Multi-Silo: Legal, I.T., H.R. issue**
- ❑ **Procedures:**
  - **Pre-hire**
  - **Hire**
  - **Pre-termination**
  - **Termination**
  - **Post-termination**

# What's at risk & why? Disgruntled Employees



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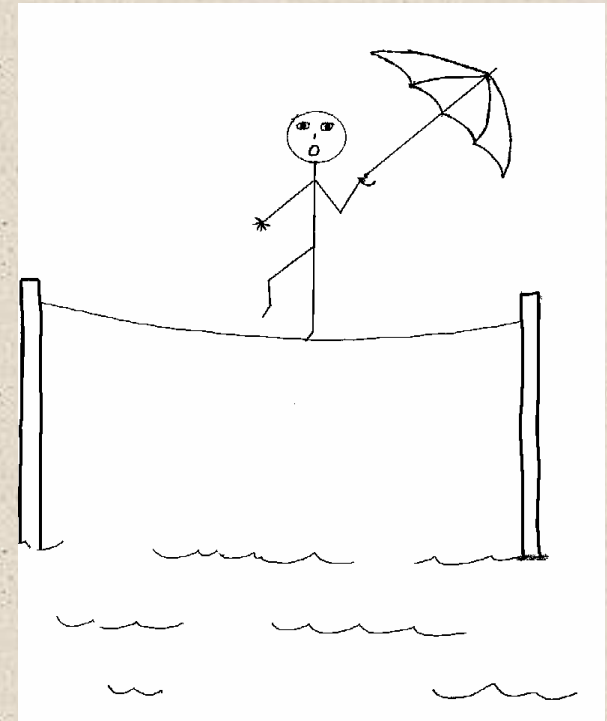
# A Wake Up Call!

**THIS COULD APPLY TO YOU!:**

**“Business’ server & data-  
centre destroyed by  
disgruntled employee/  
arson/negligence!”**

**No access/No business; --  
Business may not recover!**

Your Local Newspaper (Some Time Soon)



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# What's at risk & why?: Internet Threats

## Internet Threats: An Employee Hacker, Competitor?)



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# What's at risk & why?

## Disgruntled Employee

**August 27, 2003**  
**Chicago, Illinois**

**A gunman returned to a storage warehouse in Chicago where he had been fired six months earlier and opened fire, killing six co-workers, according to authorities. He was then shot and killed in the last of three gunbattles with Chicago police, authorities said.**

**Police stormed the building, near the former Comiskey Park on the city's southwest side, about an hour after the man started shooting.**

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# What's at risk & why?

- ❏ **Hacker attack left Port of Houston in chaos (first electronic attack to disable a critical part of a country's infrastructure); (100703)**
- ❏ **Virus writers probed for terror ties (cyber warfare: Sobig/F virus & Blaster worm); (100703)**
- ❏ **Ex-ViewSonic employee pleads guilty to hack; accessing (through other employee passwords) a company server & deleting critical data after being fired; (100603)**
- ❏ **Woman sentenced for internet bank theft (who has access to your passwords?); (092603)**
- ❏ **Internet attacks rose this year (viruses, worms, hacker attacks) (100103) U.S.**
- ❏ **State Dept. fights computer virus; 78,000 names from U.S. Immigration/Visa d/base (092503)**

# What's at risk & why?



## Employee Productivity (CyberSlacking)



### Neilson Media Research:

- 1996 - IBM, Apple & AT&T employees visited Penthouse website 12,823 times in one month
- Average 13 minutes per visit => 347 person days lost

# What's at risk & why?

- **Spamming**
- **Improper E-Mail Use**
- **Copyright/Licensing Breach ("Pirating"):**
  - **Anti-piracy enforcement:**

# What's at risk & why?



## External risks



### **\*\*High Risk/High Cost\*\***



Your Neighbour (Access)



Business Continuity



Disasters: Intentional, Accidental, Medical



Corporate espionage

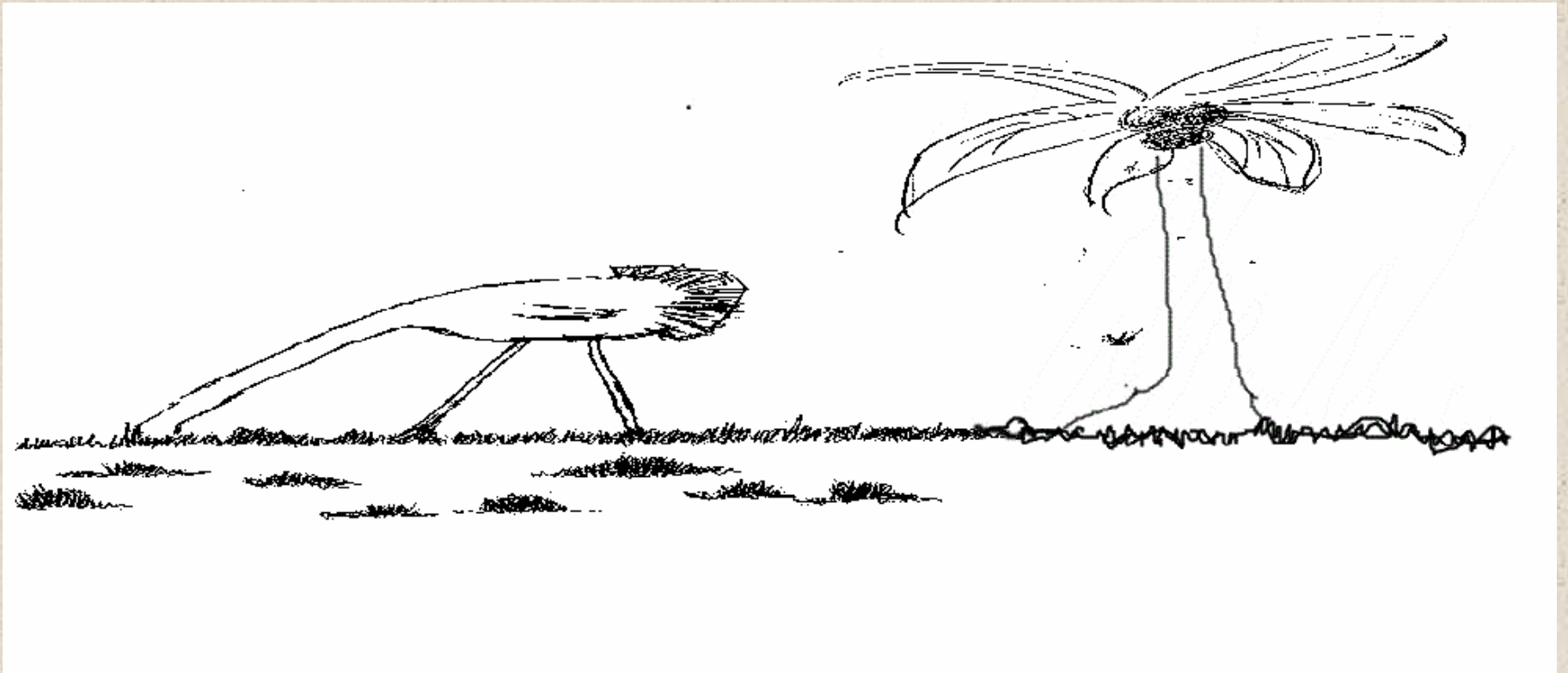


Security breaches

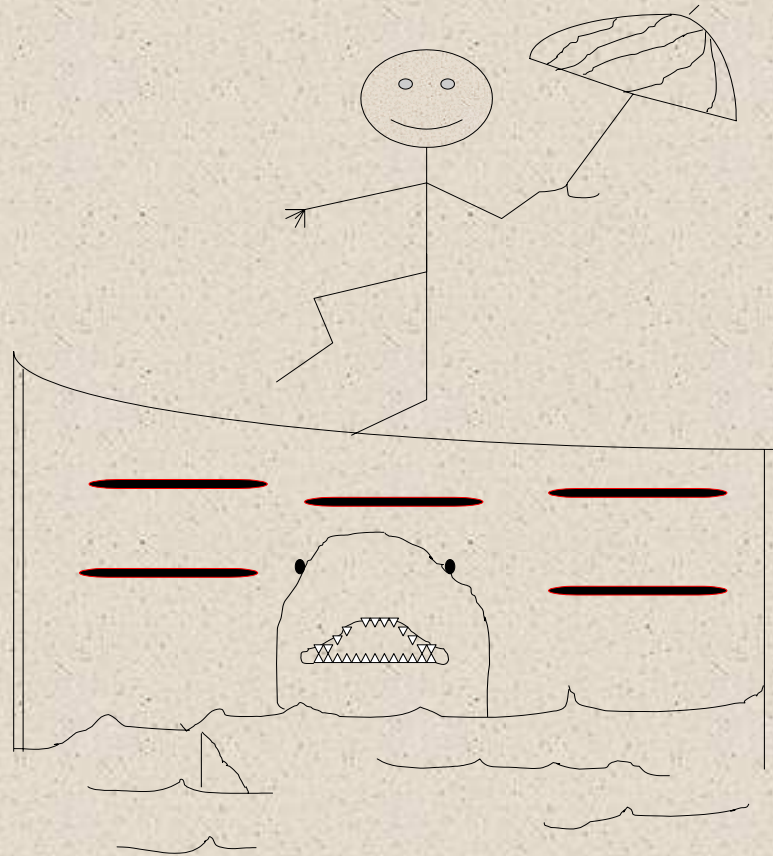


Theft of I.P./Confidential Info. & Equipment

**Ignore it or deal with it!  
(Inaction is a decision!)**



# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**



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**Inaction is an Act of Negligence!**




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# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**

## Worst Case Scenario:

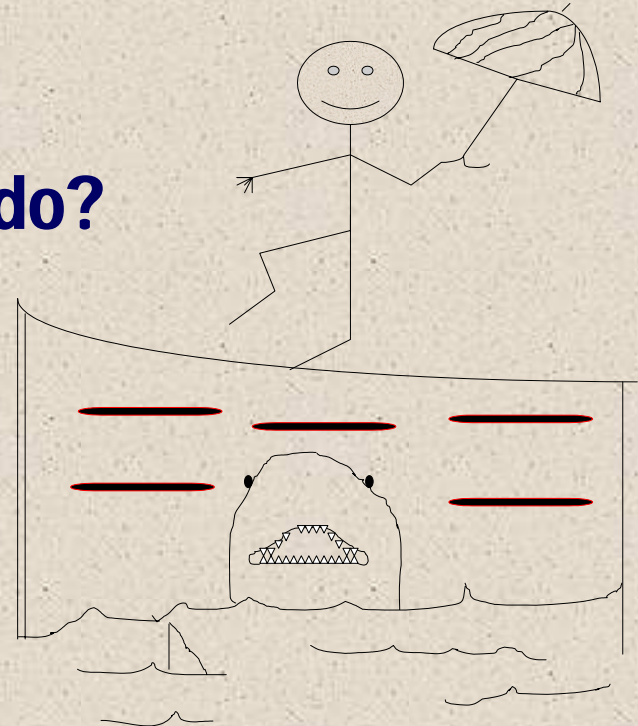
 What due diligence did you do?

 Why didn't you do anything  
(or do so little)?

 Results of Inaction =




 **LARGE JUDGEMENT! +++**

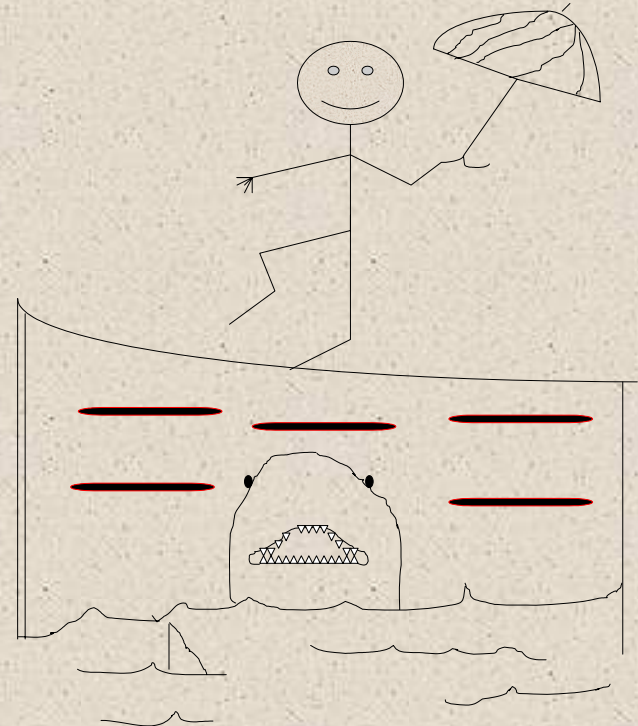
(against the Corporation, Board, Sr.  
Managers)



# Risk Management/Mitigating the Loss: DEFEND YOUR BUSINESS & YOURSELF!

## Best Case Scenario:

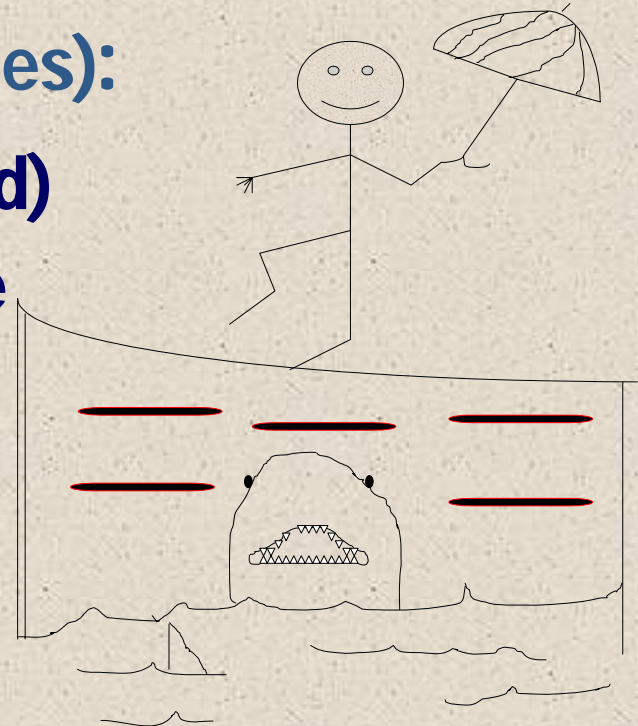
-  I "did" due diligence!
-  Results of Due Diligence =
-  NO Judgement! (against the Corporation, Board, Sr. Managers)



# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**

## Due Diligence (Best Practices):

-  Commitment (by CEO & Board)
-  Good Corporate Governance
-  Good Board/Advisory Board
-  Assess: risks
-  Assess: what's at stake?  
(losses/damages)
-  Assess: consequence (results)

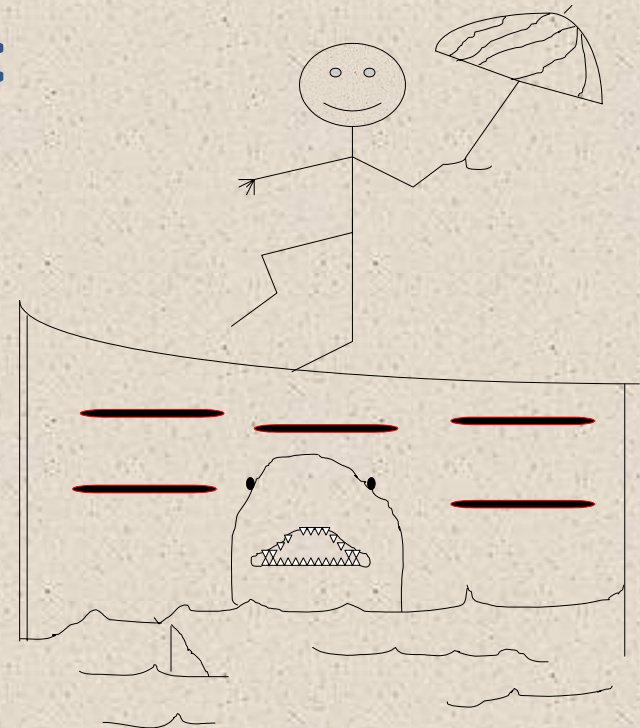


# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**



## Due Diligence (Best Practices)!:

- Integrate the Silos
- Professionals:
  - Legal/Accounting
  - Technology
- Audits
- Plans & Policies
- Action!



# Privacy issues



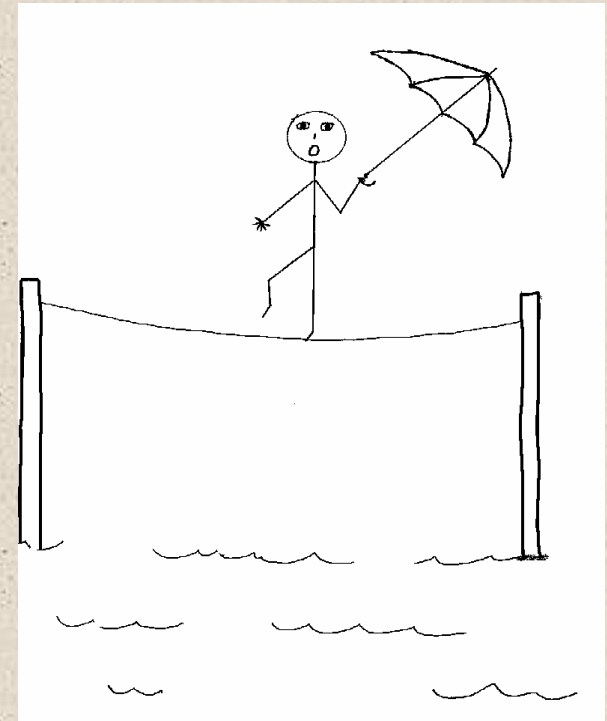
## Privacy Overview

- **Collection, Use & Disclosure of "Personal Information"**
- **Emerging Issues:**
  - **New Legislative Requirements (PIPEDA: 01/01/04)**
  - **Monitoring/surveillance/searches**

# A Wake Up Call!!

**THIS COULD BE YOU!:**

**“Privacy Commissioner  
investigating Privacy  
complaints at your  
business”**



**The Hamilton Spectator, Some time soon**

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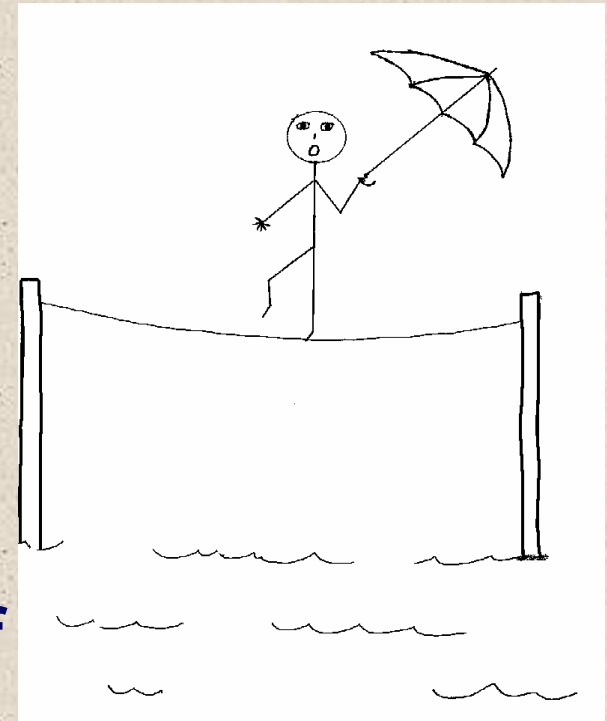
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# A Wake Up Call!!

**COULD THIS BE YOUR COMPANY!:**

**“Massive identity theft feared:  
Hard Drive with Reams of  
Personal Data Stolen from (IBM)  
Canada Unit”; (and no back-up of  
the hard drive!)**



National Post, 01/30/03

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# Privacy

-  **CCRA Theft Threatens Privacy of 120,000 Canadians in server theft; (110303)**
-  **IBM & Ontario Information & Privacy Commissioner to create first digital template of privacy legislation; (111003)**
-  **Interviews, Investigations, Monitoring..., Surveillance, “Sharing” of P.I. Between Silos;**

# Privacy



## Privacy Safeguards:

-  Reasonable safeguards related to: creating, maintaining, using or disseminating Personal Information (P.I.), and protecting it from loss or misuse
-  Security & Integrity of P.I.: physical, organizational & technological measures that are appropriate to the sensitivity of the information
-  Unauthorized access, use, copying, disclosing, altering or destroying P.I.

(CICA, Feb. 2003)

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# Business Continuity Management



## Business Continuity Management:

-  ***\*\* High Risk/High Cost /High Benefit\*\****
-  **Caused by a "Disaster"**
-  **Recovery of valuable business information**
-  **Ensures an organization can continue to function through an operational interruption**
-  **Policies (BCP, DRP, Emergency Management)**
-  **More than an I.T. Matter! ("integrating the silos")**

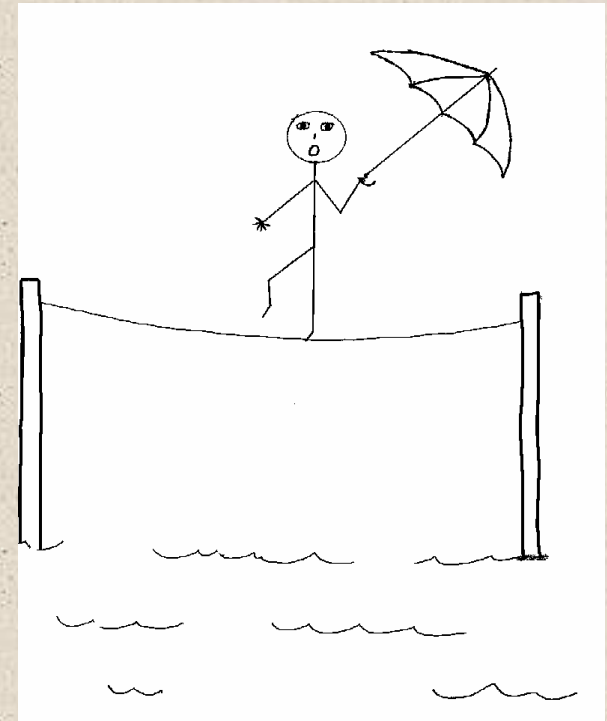
# What is a Disaster?



## Disaster:

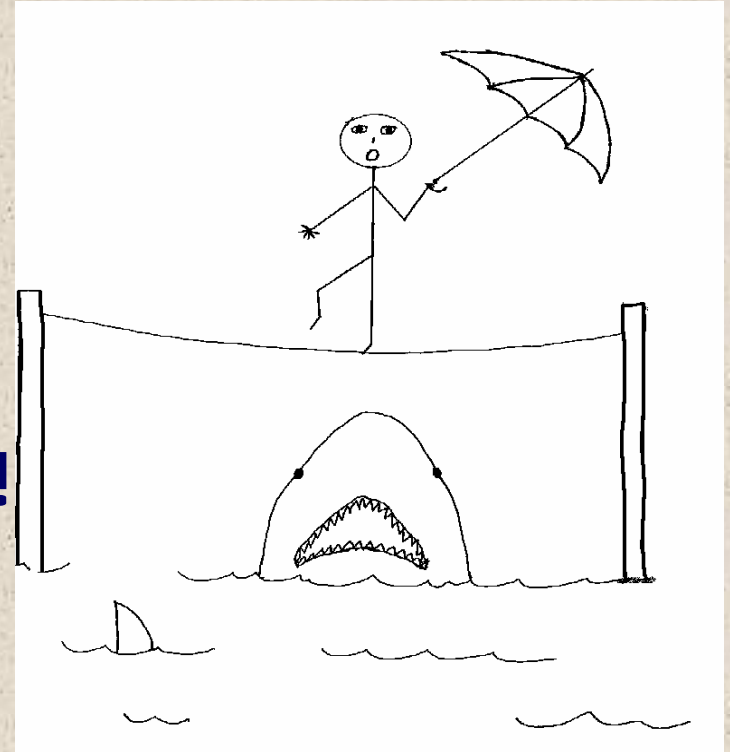
**In general, most disaster events are defined by the need for external assistance**

Anonymous



# What's at risk & why?

- **YOUR BUSINESS: Data/Apps.!:**  
You data is your Business!
- **ACCESS:**  
To your Business/Data/Apps!



# What's at risk & why?



## Calculating the cost of downtime



**\*\*High Risk/High Cost \*\***



**Labour Lost (cost per hour) = (# of employees) \* (average cost per hour per employee [salary, benefits, overhead] x (percent not able to work on other tasks)**



**IT Impact = (# of hours repairing or resolving issues) x (average cost per hour]**



**Revenue Impact = (Gross Yearly Revenue) / (Business Hours per year) x Impact Percentage (0 – 100%) (PGI)**

# What's at risk & why?

- ❏ **"...consider the real dollar value of information (your HR data) you deal with day to day" (and not being able to access it!)**
- ❏ **"One minute of downtime can cost an organization anywhere from \$2,500.00 to \$10,000.00."**  
The Standish Group 2001
- ❏ **"Information theft costs businesses upwards of \$100B each year!"**  
Paul Turner, Law Times, June 2, 2003
- ❏ **What is the value of lost/stolen Personal Information?**  
Jay N. Rosenblatt, September 17, 2003

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# Acceptable policies (Customize)

- ❑ **Email/Internet/Computer Use**
- ❑ **Privacy (including Security) for Customers & Employees: Personal Info. & Health Info.**
- ❑ **I.P., Licensing, Confidential Information**
- ❑ **Records Management: retention, storage & destruction (reformatting is not shredding)**
- ❑ **Outsourcing**

# Effective Policies









## How to make your Policies effective:

- Management Commitment
- Start!
- Joint" Creation (Integrating the Silos)
- Training
- Implementation
- Publishing and Displaying
- Sign-on
- Monitor/Test
- Enforce
- Update/Amend

# Summary & Next Steps



## Good Corporate Governance (Due Diligence):

-  Who cares?
-  Why me?
-  AAA:
  -  Awareness
  -  Assessment
  -  Action!

# Action

- **As a result of what you learned today, what one action can you take when you get back to your office that will have a positive impact on your Department, Senior Management, Board of Directors & your Business?**
- **Write it down**
- **DO IT!**

# Surprises!

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# Questions & answers

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# Thank you

**Jay N. Rosenblatt**

**Email: [rosenblattj@simpsonwigle.com](mailto:rosenblattj@simpsonwigle.com)**

**Phone: (905) 528-8411 #301**

**Fax: (905) 528-9008**



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# Hamilton Office

Suite 400 , 21 King Street West  
Hamilton, Ontario L8N 4W1  
Mailing Address: P.O. Box 990  
Hamilton, Ontario L8N 3R1

Tel: (905) 528-8411  
Fax: (905) 528-9008

# Burlington Office

Sims Square, Suite 501  
390 Brant Street  
Burlington, Ontario L7R 4J4

Tel: (905) 639-1052  
Fax: (905) 333-3960

Email: [rosenblattj@simpsonwigg.com](mailto:rosenblattj@simpsonwigg.com)

Website: [www.SimpsonWigle.com](http://www.SimpsonWigle.com)



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