

**ICORM Conference February 19, 2004**  
**Operational Risk Management:**  
**A Discipline to Enhance Governance**

**Jay N. Rosenblatt, Partner**

February 19, 2004

 BARRISTERS & SOLICITORS **SimpsonWigle<sup>®</sup>LLP**

***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
- ❏ O.R.M. & Good Corporate Governance
- ❏ Current & Emerging Trends & Issues
- ❏ Who's at risk? (Identification)
- ❏ What's at risk & why? (Evaluation)
- ❏ O.R.M. = Due Diligence = Proper Standard of Care  
= Good Corporate Governance
- ❏ Summary

# Who we are



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

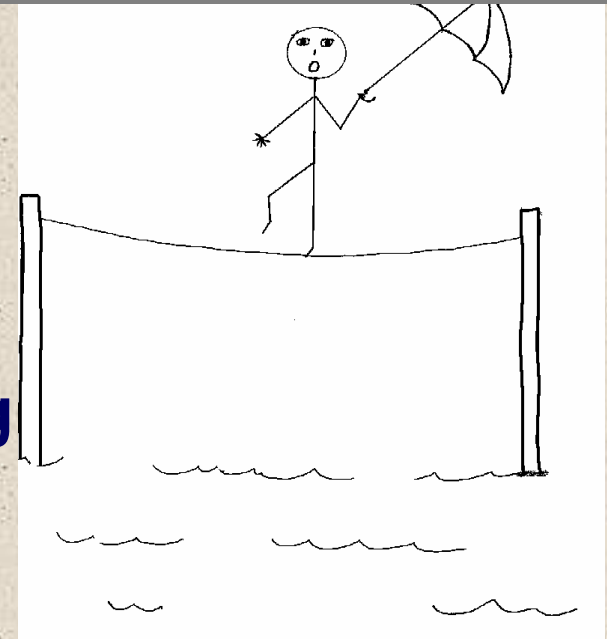


**Jay Rosenblatt: is a Business & Technology Partner at the Firm, providing counsel & solutions to businesses in general, and to technology companies and companies enabled by technology; founder of the Golden Horseshoe Venture Forum ([www.ghvf.org](http://www.ghvf.org)); goal of advancing the business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

# What is Operational Risk Management?

## Operational Risk Management (O.R.M.) :

**“The risk of direct or indirect loss, resulting from inadequate or failed internal Processes, People, and Systems, or from external events”**



Tri-Media Corp. January, 2004

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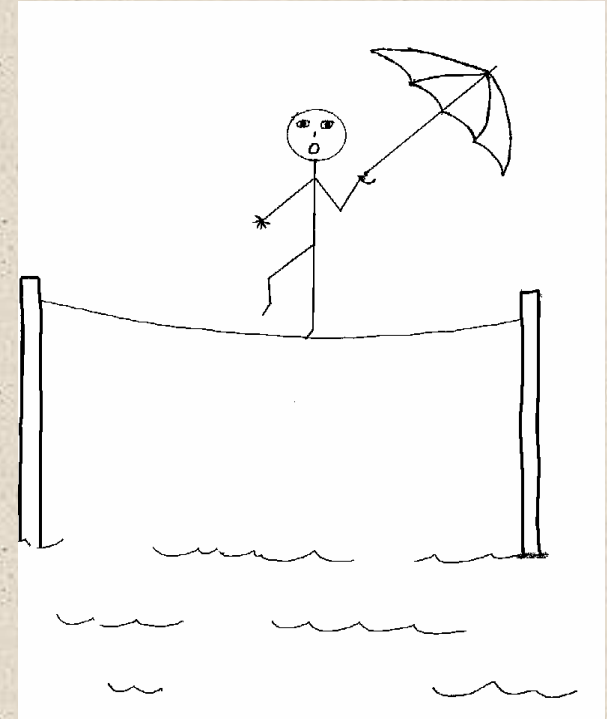
# What is Corporate Governance?



## Corporate Governance:

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

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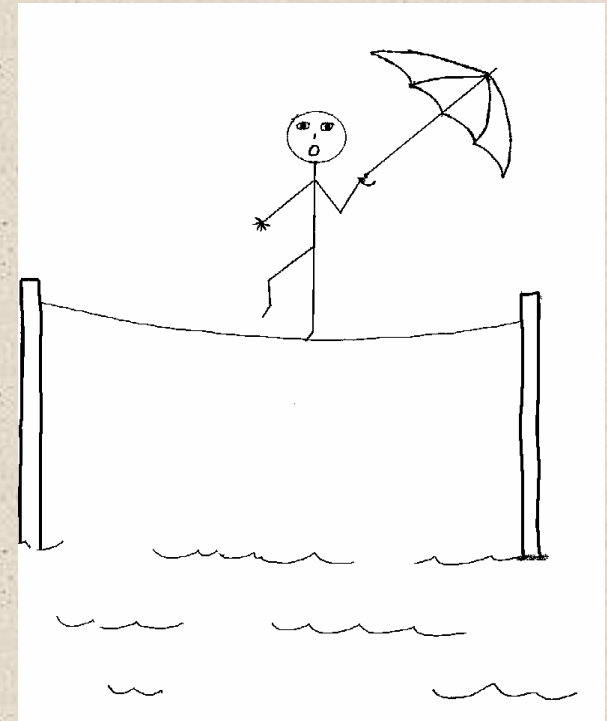
# What is Risk?



## Risk:

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

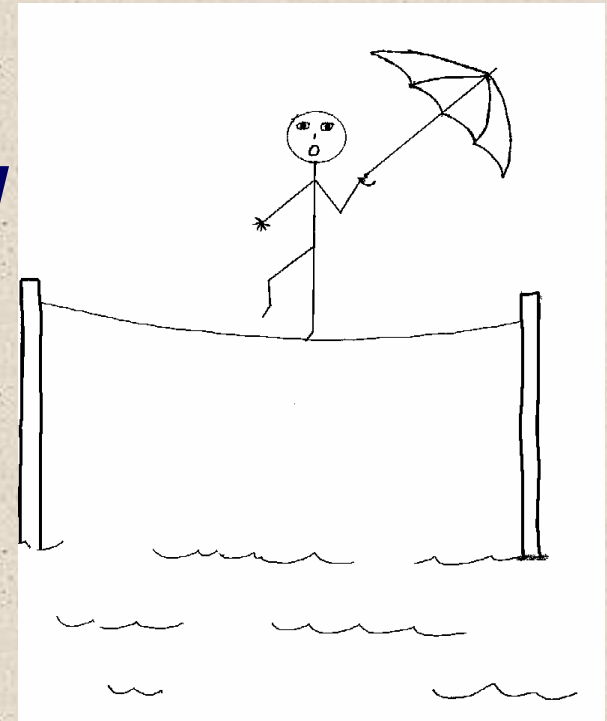
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# What is Negligence?

## 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.



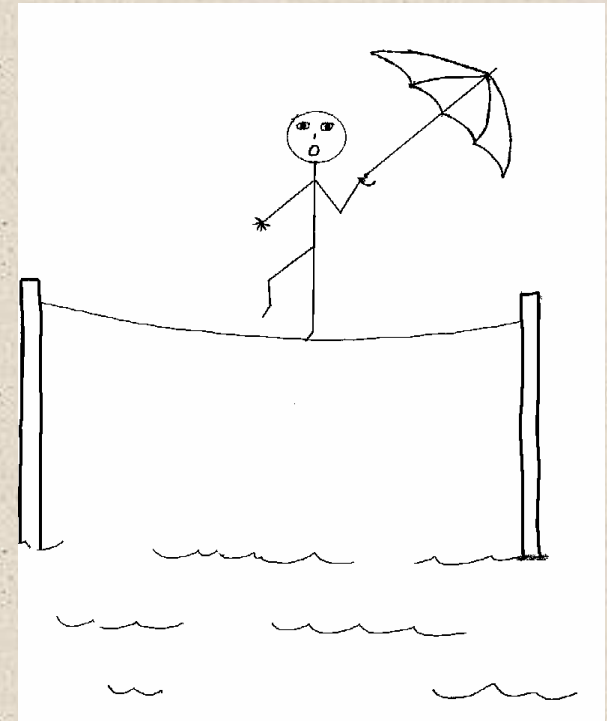
# Emerging Trends

- ❑ **Employee Risk**
- ❑ **Regulatory Risk:**
  - **Bill 198/Sarbanes-Oxley**
- ❑ **Privacy: PIPEDA & HIPA**
- ❑ **Disaster/Emergency Management**
- ❑ **C-45 (Criminal Code)**
- ❑ **Workplace Safety (OH&SA)**
- ❑ **I.D. Theft/Social Engineering**

# A Wake Up Call!

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

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

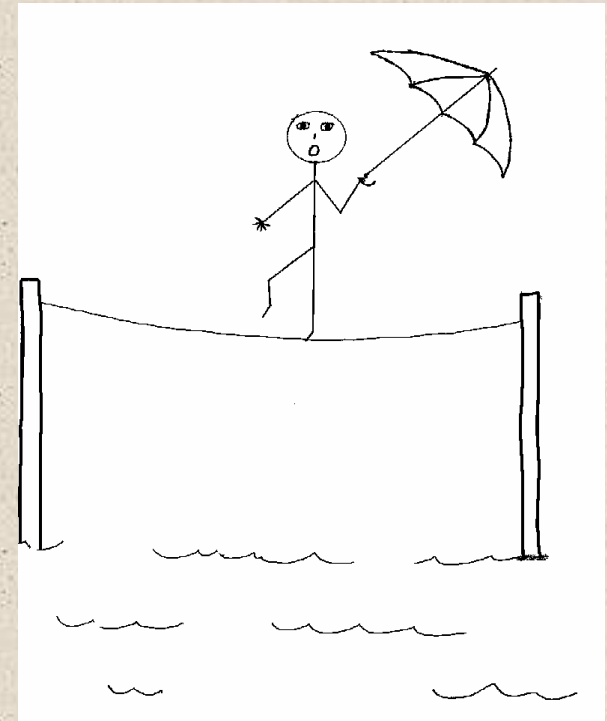


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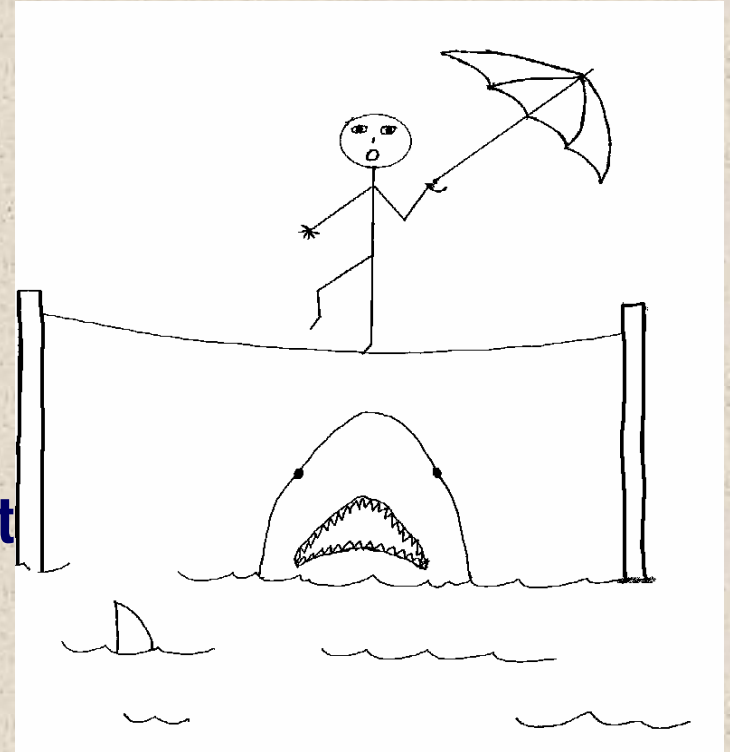
# Who's at risk: Identification

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



# What's at risk & why?: Evaluation

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



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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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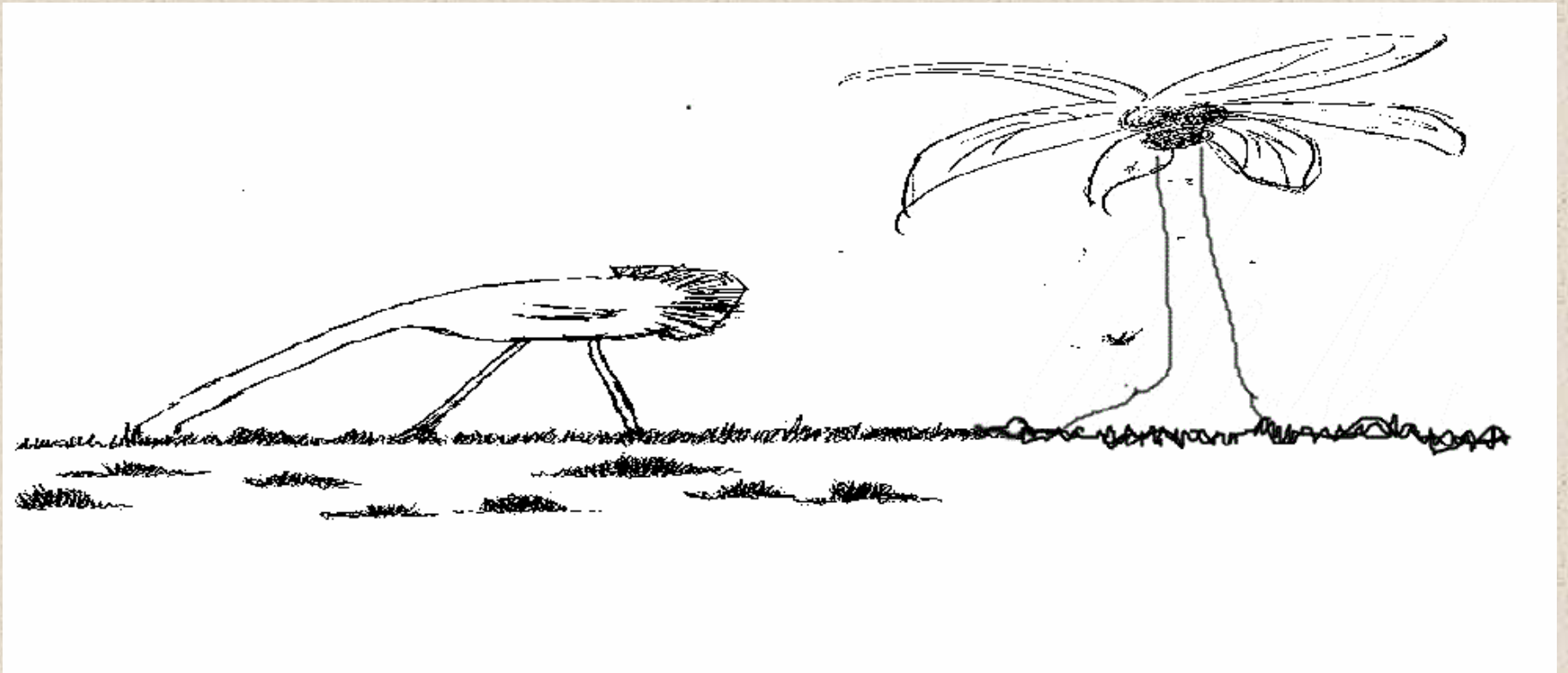
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# What's at risk & why?

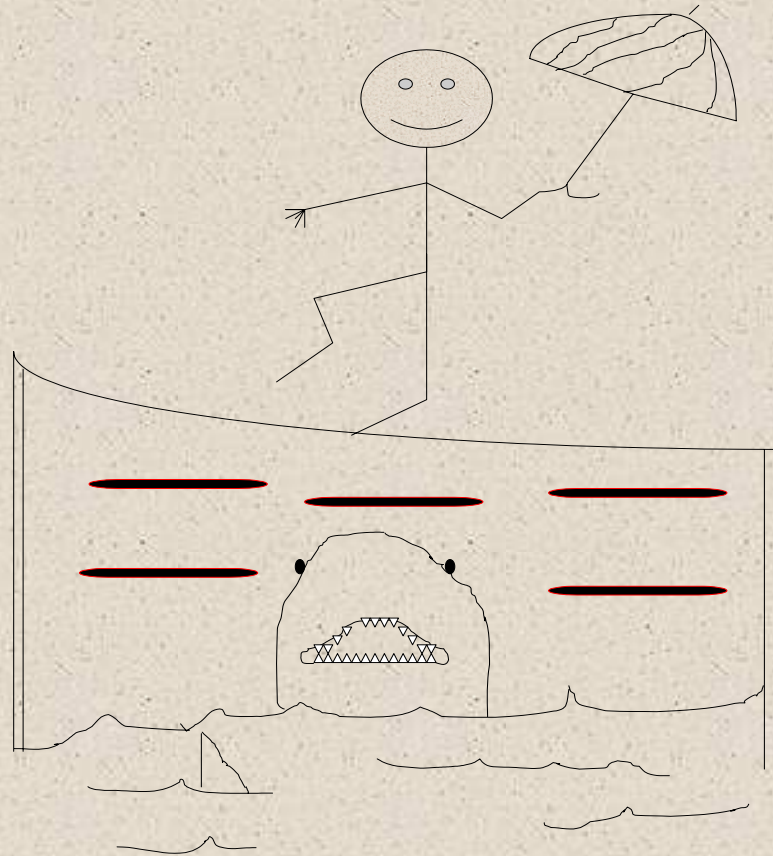
## Legal Exposure

-  **Lawsuits = Damages = Costs + +**
-  **Torts & Contracts**
-  **Employees**
-  **Regulatory Compliance: Bill 198 & S-0**
-  **Privacy: PIPEDA & HIPA**
-  **Disaster/Emergency Management**

**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:

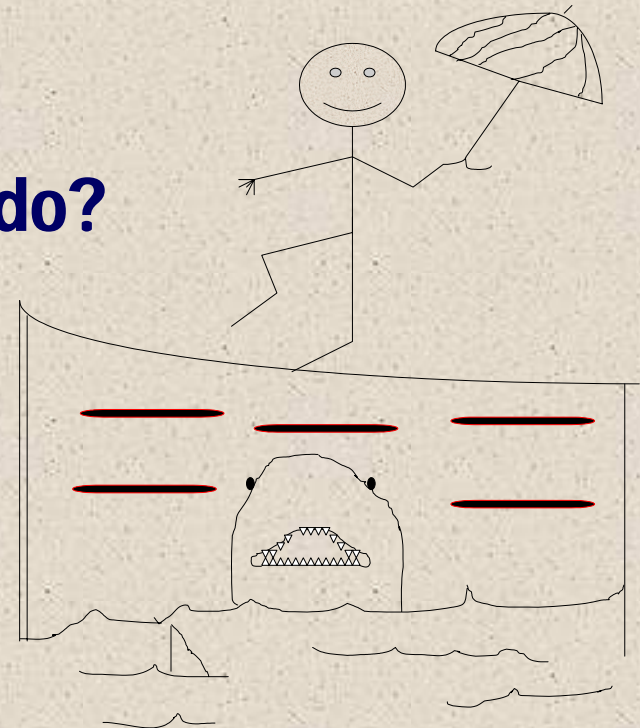
 What due diligence did you do?

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

 Results of Inaction =




 **LARGE JUDGEMENT! +++**

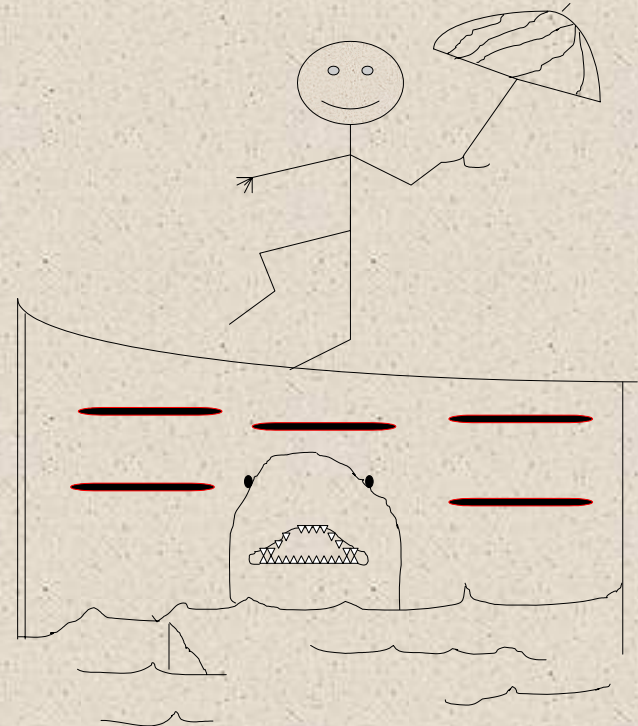
(against the Corporation, Board, Sr.  
Managers)



# 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)

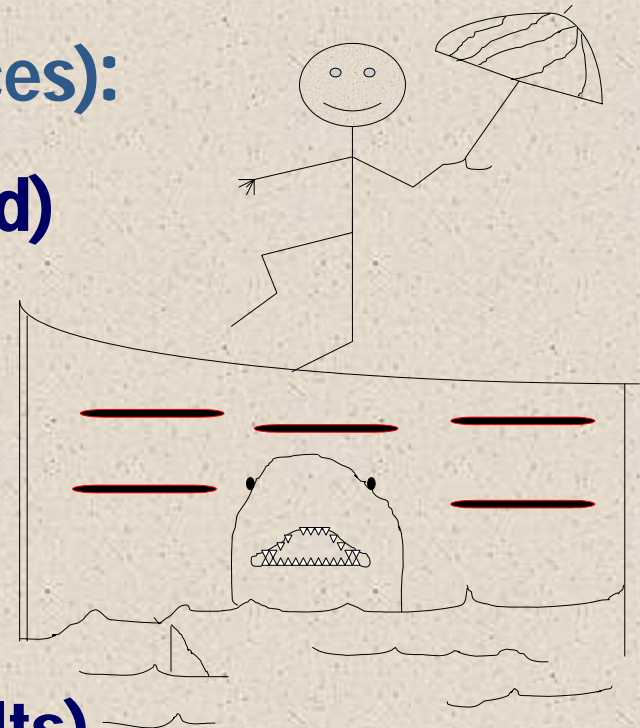


# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**



## Due Diligence (Best Practices):

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

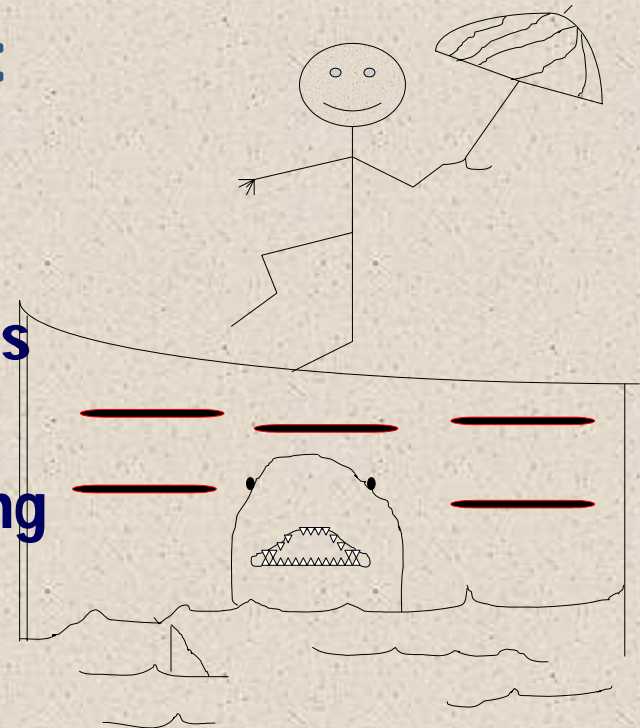


# Risk Management/Mitigating the Loss: **DEFEND YOUR BUSINESS & YOURSELF!**



## Due Diligence (Best Practices)!:

- ❑ **Action!**
  - ❑ **Integrate the Silos:  
People, Processes & Systems**
  - ❑ **Professionals:**
    - ❑ **Legal/Accounting/Consulting**
    - ❑ **Technology**
  - ❑ **Audits**
  - ❑ **Plans & Policies**
- = Good O.R.M./Corporate Governance**



# (1) Employee Risk



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

- **Vicarious Liability**
- **Theft of I.P., I.D., Confidential Information & Equipment**
- **Copyright Breaches**
- **Sabotage**
- **Pirating of Software**
- **Harassment, Discrimination**
- **Cyber-slacking**

# What's at risk & why? Disgruntled Employees



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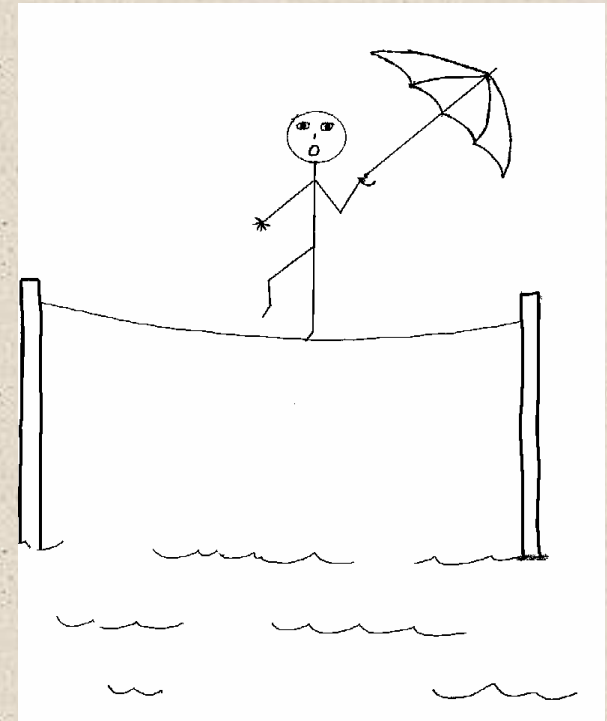
# A Wake Up Call!

**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)



# (1) Employee Risk: Due Diligence








## Due Diligence

- **Multi-Silo: Legal, I.T., H.R. issue**
- **Hiring/Termination Management:**
  - **Pre-hire**
  - **Hire**
  - **Pre-termination**
  - **Termination**
  - **Post-termination**
- **Policies**

## (2) Regulatory Risk

### Bill 198 (Ont.) & Sarbanes-Oxley (U.S.)

-  **Fraud**
-  **OSC Rules**
-  **Penalties**
-  **Damages**
-  **Civil Liability**







# **(2) Regulatory Risk: Due Diligence**

## **Due Diligence**

-  **Awareness**
-  **Experts**
-  **Policies**
-  **Compliance**

# **(3) Privacy Risk**

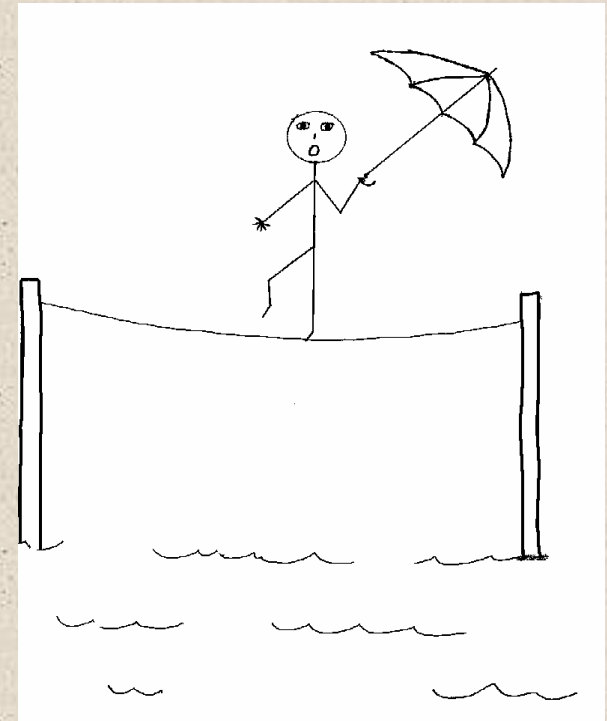
## **Privacy Overview**

-  **Collection, Use & Disclosure of “Personal Information”**
-  **Emerging Issues:**
  -  **New Legislative Requirements:**
    -  **PIPEDA: 01/01/04**
    -  **HIPA: 01/01/05?**
  -  **Monitoring/surveillance/searches**

# (3) Privacy Risk

**THIS COULD BE YOU!:**

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



**The Hamilton Spectator, Some time soon**

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# **(3) Privacy Risk: Due Diligence**

## **Due Diligence**

-  **Chief Privacy Officer**
-  **Privacy Audit**
-  **Privacy Policy**
-  **Consent**
-  **Security**

# (4) Disaster/Emergency Management



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



**Caused by a "Disaster"**



**Loss of:**



**YOUR BUSINESS: Data/Apps.!:**



**You data is your Business!**



**Access: To your Business/Data/Apps**

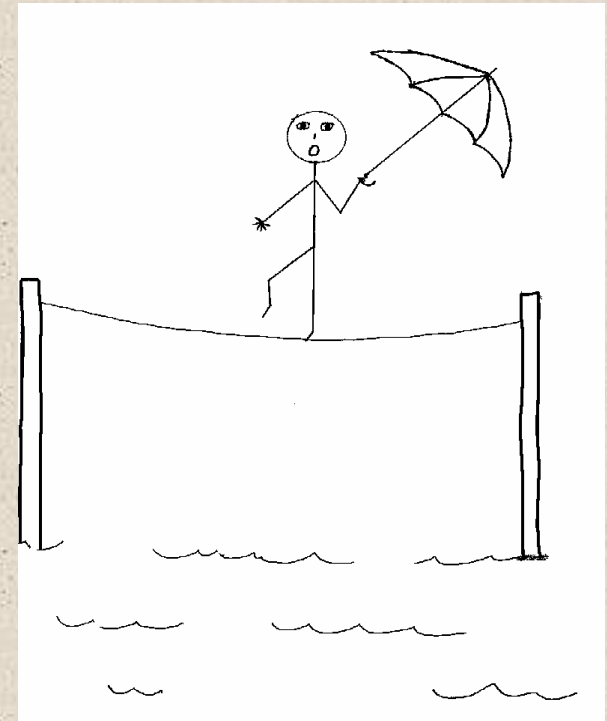
# What is a Disaster?



## Disaster:

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

Anonymous



# (4) Disaster/Emergency Management



## 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)**

# (4) Disaster/Emergency Management: Due Diligence









## Due Diligence:

- ❑ Policies (BCP, DRP, Emergency Management)
- ❑ More than an I.T. Matter! (“integrating the silos”)
- ❑ Recovery of valuable business information
- ❑ Ensures an organization can continue to function through an operational interruption
- ❑ Ensure an organization can continue to function through an operational interruption

# Summary & Next Steps



**O.R.M. = Due Diligence = Good Corporate Governance**

-  **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

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