Grey Areas
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A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

Risk Management for Regulators – Part 1: Overview

by Richard Steinecke
September 2014 - No. 189

Formal risk management originated with insurers, spread to the banking sector, and now is employed by most large organizations and many small ones. Risk management is now used by many regulators.

Risk management principles are not new. Aspects of them have always been applied by regulators. Reviewing a regulator's insurance needs with a broker, sending a file out for review by a lawyer or listing the advantages and disadvantages of a proposed policy are all examples of risk management. In fact, all organizations have been affected by risk management concepts applied by external agencies. For example, the requirements by privacy authorities to develop and implement a privacy policy, the obligation imposed under occupational health and safety regulations to have a written workplace violence and harassment policy and to train all supervisors and employees on workplace safety are all examples of externally imposed risk management activities.

What is new is the systematic approach to identifying, assessing and addressing risk. Risk management also brings a number of tools for ensuring that risk is properly recognized and evaluated.

Current risk management theory also requires that risk be viewed within the context of the entire organization so that steps taken in one area do not inadvertently affect another area. For example, a decision to remove a language fluency requirement for registration could generate future complaints from clients who have not been understood and even civil suits for negligent regulation. This "enterprise risk management" approach also means that risk should not be viewed as only a negative concern; there can be positive risks, or opportunities, for regulators in much of their decision making.

Risk management is often portrayed as a cycle with four steps:

1. Risk Identification (sometimes with a preliminary step of scanning the environment)
2. Risk Analysis
3. Risk Treatment and
4. Monitoring and assurance.

For regulators, this cycle can be applied in at least three areas:

i. Risk management principles can be applied to the entire organization, such as all aspects of the operations of the regulator. To assist in this process, risk managers have used four categories, or quadrants, of risk:

    a. Hazard risks to property (e.g., fire), liability (e.g., wrongful dismissal) or personnel (e.g., injury);

    b. Operational risk that arise from people (e.g., mistakes), processes (e.g., handling of complaints), systems (e.g., information technology) or controls (e.g., supervision and reporting);

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Facsimile: 416-593-7867, E-Mail: rsteinecke@sml-law.com

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c. Financial risk flowing from the effect of market forces on financial assets or liabilities such as credit risk (e.g., non-payment of debts owed), price risk (e.g., inability to raise fees), liquidity risk (e.g., running out of ready cash) and market risk (e.g., depreciation of investments); and

d. Strategic risk arising from trends in society (e.g., media scrutiny, loss of confidence by the government in the regulator) or the economy (e.g., decline in demand for the services of the profession).

ii. Risk management principles can be applied to specific policies or initiatives, such as a proposal for the organization to go paperless or a specific policy or guideline proposed for those being regulated (e.g., a new inspection program). Another example would be to apply risk management concepts and processes to the handling of complaints and the conducting of investigations so that resources (e.g., time, effort, remediation, referrals to discipline) are applied effectively.

iii. Risk management principles can be applied to the public being served. Two Ontario regulators actually have statutory Risk Officers whose job it is to apply risk management principles to the protection of the public served by the regulator rather than to the regulator itself. Such a Risk Officer is typically external to and independent of the organization. While there is likely little practical difference between a risk management approach to protect the reputation and effectiveness of the regulator and to protect the public being served by the regulator, the difference in terminology and perspective can be useful.

The purpose of risk management is to assist an organization in achieving its goals (i.e., protecting the public, advancing its reputation, avoiding the waste of resources). It improves decision-making within the organization by ensuring that decisions are based on the most complete and properly analyzed information possible.

To be effective, risk management must be integrated into the entire organization. The governing board or council must view risk management as an essential part of the organization’s functioning. The senior management of the organization has to devote time and resources to risk management activities. Each department needs to see the value of risk management to their activities and its importance to the entire organization. Front line staff has to appreciate the significance of their contribution to risk management. In addition, risk management must pervade and be coordinated with the other structures and activities of the organization including: strategic planning, governance, management, legal, compliance, human resources, information technology and operations.

Future issues of *Grey Areas* will explore in more detail the specific application of risk management principles to regulators.