

Cybersecurity

SUMMARY

Cyber risk management is an increasingly important challenge for organizations of all sizes and kinds. Cyber risks are the risks of damage, loss and liability to an organization resulting from a failure or breach of the organization's information technology systems or unauthorized use or disclosure of the organization's sensitive, protected or regulated data. Commentators have said that there are only two kinds of organizations — those that have been hacked and know it, and those that have been hacked and don't know it yet.

BLG has one of the most talented and experienced cybersecurity legal teams in Canada. BLG lawyers have extensive expertise and experience regarding cyber risk management and crisis management legal services, and a proven ability to successfully prosecute and defend complex cyber litigation (including class actions).

Cybersecurity and Cyber Risk Management Service Offerings

Cyber Risk Management Program

Effective cyber risk management should be based on a comprehensive cyber risk management program involving the identification, assessment and prioritization of cyber risks and the selection of suitable risk treatments for identified risks.

BLG can assist with the development and implementation of a cyber risk management program by providing advice regarding legal requirements and regulatory guidance, helping conduct audits and assessments, advising regarding risk treatments, and drafting/reviewing program documents.

Incident Response Plans

Effective cyber risk management requires pre-determined, written incident response plans (including various protocols and guidelines) for the rapid, lawful and effective response to various kinds of cybersecurity incidents.

BLG can assist with the development of incident response plans by providing advice regarding legal requirements and regulatory guidance and drafting/reviewing incident response plans and related documents (including protocols and guidelines for communications, record keeping, evidence collection, risk assessments, notification/information sharing and post-incident review).

Test, Train and Exercise Program

Effective cyber risk management requires a testing, training and exercise ("TTX") program to help ensure that incident response plans are up-to-date and relevant personnel and information technology systems are in a state of readiness.

BLG can assist with the design and execution of a TTX program by providing advice regarding legal requirements and regulatory guidance, drafting/reviewing TTX program documents, participating in TTX program activities (e.g. table-top exercises) and providing post-activity assessments and advice.

Practices/Procedures and Education/Training

Effective cyber risk management requires practices and procedures for the use of information technology systems and information and ongoing education and training of relevant personnel (including directors and senior management).

BLG can assist with cyber risk management practices/procedures and education/training by providing advice regarding legal requirements and regulatory guidance (including advice regarding privacy, hiring/engagement/on-boarding of personnel and monitoring/enforcing compliance), drafting/reviewing policies and procedures, assisting with education/training and providing advice regarding monitoring, verifying and enforcing compliance.

Business Partner Management

Effective cyber risk management requires that cyber risks be addressed in contracts with business partners (e.g. vendors, suppliers, service providers and subcontractors), especially for business arrangements involving transfers of regulated information (e.g. personal information) to business partners, including in connection with the use of cloud services and other outsourcing arrangements.

BLG can assist with business partner risk management by providing advice regarding legal requirements and regulatory guidance, preparing due diligence checklists, drafting/reviewing standard form procurement documents and standard form contract schedules, drafting and negotiating contracts with business partners, drafting/reviewing internal policies and procedures and assisting with monitoring and verifying business partner compliance with contractual requirements.

Board and Senior Management Advice

Cyber risk management is a C-suite issue. Directors and officers are responsible for ensuring that their corporation/organization properly manages cyber risks and effectively responds to cyber incidents.

BLG can help educate and advise directors and senior management so that they are able to ask the right questions, fulfil their legal duties, and establish an appropriate due diligence and business judgment record.

PUBLICATIONS & PRESENTATIONS

- Quoted (Ira Nishisato), "McDonald's Canada says 95,000 affected in careers website hack," *The Globe and Mail*, March 31, 2017.
- Interviewed (starts at 1:22) (Ira Nishisato), "Hackers breach Forces.ca, redirecting users to official Chinese state website," *CityTV*, November 17, 2016.
- Quoted (Ira Nishisato), "Third-party service providers can be 'hornets nest' in cyber security: ICRMC speaker," *Canadian Underwriter*, April 2, 2016.
- Speaker (Ira Nishisato), "Operationalizing Incident Response," *ICRMC — From Governance to Response: An Advanced Cyber Risk Management*, Toronto, April 1, 2016.
- Quoted (Ira Nishisato), "Unto the [Data] Breach," *Corporate Risk Canada*, Winter Edition 2015.
- Quoted (Ira Nishisato), "Cybersecurity Comes to the Boardroom," *Lexpert® Magazine*, October 2015.
- Interviewed (Ira Nishisato), "Cybersecurity the top business risk for 2015," *Business News Network*, December 23, 2014.

Publications

- "How to Prepare For, Prevent and Repair Online Data Leaks," September 2018.
- "Loss of Legal Privilege over Cyberattack Investigation Report," August 2018.
- "U.S. Financial Institution Regulators Issue Guidance About Cyber Insurance," April 2018.
- "Canadian Personal Information Security Breach Obligations – Preparing for Compliance," April 2018.

- "[Canadian Investment Industry Regulator Proposes Mandatory Cybersecurity Incident Reporting](#)," April 2018.
- "[Cybersecurity Framework for Ontario's Electricity Industry](#)," March 2018.
- "[ETHI Committee Prepares for GDPR Adequacy Assessment in New Report on PIPEDA](#)," March 2018.
- "[Insurance for Cybersecurity Incidents and Privacy Breaches](#)," February 2018.
- "[VTech Data Breach Enforcement Actions — Guidance for Data Security and Privacy Law Compliance](#)," January 2018.
- "[Top 10 Legal Risks for Business in 2018](#)," January 2018.
- "[Insider Risk Management and Rogue Employees](#)," December 2017.
- "[Preparing for Compliance with Canadian Personal Information Security Breach Obligations](#)," November 2017.
- "[Nova Scotia Introduces New Cyberbullying Legislation](#)," November 2017.
- "[G-7 Guidelines for Cybersecurity Assessment](#)," October 2017.
- "[Cybersecurity Guidance from Canadian Securities Administrators](#)," October 2017.
- "[The European Union General Data Protection Regulation – A Primer for Canadian Organizations](#)," October 2017.
- "[Important Changes to Password Best Practices Guidance](#)," October 2017.
- "[B.C. Supreme Court Certifies National Class Action for Financial Institution Data Breach](#)," October 2017.
- "[Prioritizing Safety: The New U.S. Federal Guidelines for Automated Driving Systems](#)," September 2017.
- "[PIPEDA's Breach of Security Safeguards Regulations Now Published and Open for Comments](#)," September 2017.
- "[Settlement of Uber Privacy/Data Security Complaint – Cybersecurity Guidance](#)," September 2017.
- "[Less is More – Data Minimization and Cyber Risk Management](#)," August 2017.
- "[Settlement of Walmart Canada Photo Centre Data Breach Lawsuits – Lessons Learned](#)," June 2017.
- "[Legal Privilege for Data Security Incident Investigation Reports](#)," June 2017.
- "[New York State Cybersecurity Regulation for Financial Institutions](#)," April 2017.
- "[Cyber Risk Management Guidance for Corporate Directors](#)," February 2017.
- "[Regulatory Enforcement Action Emphasizes Need for an Information Security Governance Framework](#)," February 2017.
- "[Cyber Risk Management — Regulatory Guidance for Reporting Issuers' Continuous Disclosure of CyberSecurity Risks and Incidents](#)," January 2017.
- "[Cybersecurity Guidance for Small and Medium Size Enterprises](#)," January 2017.
- "[Top 10 Legal Risks for Business in 2017](#)," January 2017.
- "[Cyber Risk Management — Phishing](#)," December 2016.

- "[Data Security Incident Response Plans — Some Practical Suggestions](#)," December 2016.
- "[Guidance for Defending and Responding to Ransomware Attacks](#)," November 2016.
- "[Cyber Risk Management – G7 Cybersecurity Guidelines For The Financial Sector](#)," October 2016.
- "[Cyber Risk Management — Regulatory Guidance From The Canadian Securities Administrators](#)," September 2016.
- "[Cyber Risk Management – New York State Regulation For Financial Institutions](#)," September 2016.
- "[Cyber Risk Management – Legal Privilege Strategy – Part 2](#)," July 2016.
- "[Autonomous Vehicles](#)," July 2016.
- "[Cyber Risk Management – Legal Privilege Strategy – Part 1](#)," July 2016.
- "[Cybersecurity Guidance From Investment Industry Organization](#)," May 2016.
- "[Cyber Incident Response Plans — Test, Train And Exercise](#)," May 2016.
- "[Do insurers have a duty to defend as a result of a failure to comply with PCI — DSS](#)," May 2016.
- "[Government Guidance for Preventing and Responding to Ransomware Attacks](#)," April 2016.
- "[Internet of Things: OPC Publishes Research Paper on Privacy and Security Risks Associated with Retail and Home Environments](#)," February 2016.
- "[Apple's encryption fight against the U.S. government could spill into Canada](#)," February 2016.
- "[Cyber Risk Management — Insider Risk](#)," February 2016.
- "[Cyber Risk Management — PCI DSS Requirements For Incident Response Plan](#)," January 2016.
- "[An Introduction To PCI DSS](#)," January 2016.
- "[Cybersecurity Guidance From Investment Industry Organization](#)," January 2016.
- "[European Parliament, Council, and Commission agree on draft of first EU-wide cybersecurity legislation](#)," January 2016.
- "[Cybersecurity Indictment Unsealed on Theft of 100 Million Records](#)," November 2015.
- "[Sedona Conference Publishes Information Security Guidelines for Law Firms](#)," November 2015.
- "[Cyber-Risk Management — Data Incident Notification Obligations](#)," October 2015.
- "[Privacy Commissioners Issue Guidance for BYOD Programs](#)," October 2015.

EXPERIENCE & EXPERTISE

Cyber Risk Management and Crisis Management

BLG's recent cyber risk management and crisis management experience includes:

- Representing numerous clients (including corporations operating in the financial services and retail trade industries) to **manage security breaches** involving different Canadian

jurisdictions, including investigating the breaches; acting as the contact for interested parties, the individuals concerned, the media, external technical consultants and privacy commissioners (including the Privacy Commissioner of Canada, the Alberta, British Columbia, and Ontario Privacy Commissioners and the *Commission d'accès à l'information du Québec*); advising regarding notification obligations; assisting in drafting letters of notification; and generally contributing to the response strategy.

- Representing various clients in **investigations** carried out by privacy commissioners and regulators, including:
 - a leading Canadian credit score and analytics company;
 - an American multi-national corporation traded on the New York Stock Exchange (NYSE);
 - a leader in international family entertainment and interactive media;
 - a multi-national technology company; and
 - various financial institutions.

RANKINGS & RECOGNITIONS

The Cybersecurity Group or its members are recognized in:

- 2018 edition of *Chambers Canada — Canada's Leading Lawyers for Business* (Privacy & Data Protection)
- 2018, 2017 and 2016 editions of *The Best Lawyers in Canada*® (Information Technology Law)
- 2017 *Acritas Star, Cyber Risk and Data*
- 2016 Lexology Client Choice Awards as the exclusive winner for Information Technology in British Columbia
- 2013 in *Lexpert*® magazine, Canadian expert on privacy law
- Éloïse Gratton was awarded Clawbies : Canadian Legal Blog Award for the year 2014, for the best new legal blog, [for her blog on privacy and IT law](#)
- Since 2001, *the Canadian Legal Lexpert*® Directory for Computer & IT Law