Cybersecurity Disputes

Data breaches and cybersecurity incidents spawn a wide range of litigation claims and regulatory proceedings, demanding the advice and counsel of a skilled team of advocates. These claims typically include negligence, breach of fiduciary duty, breach of the duty of good faith, breach of contract and breach of statutory duty, as well as the new tort of "intrusion upon seclusion" and significant compliance issues for regulated organizations.

We regularly help organizations across Canada with breaches in their information technology systems or the unauthorized use or disclosure of their sensitive, protected or regulated data. Our collaborative team has extensive experience with a range of cybersecurity litigation and disputes, including:

- class actions
- confidential information
- information technology
- privacy law
- fraud
- white-collar crime
- insurance law
- intellectual property
- injunctions and extraordinary interlocutory remedies

Cybersecurity issues affect all organizations, whether public or private, large or small, irrespective of sector or industry. We assist our clients in all manner of regulatory proceedings and litigation, and routinely assist with negotiations with government agencies and regulators. We leverage our broad industry knowledge and extensive experience in public and administrative law to benefit our clients.

We also have significant experience in cyber risk management and crisis management to help prevent breaches from happening in the first place, and manage the many challenges faced by organizations when they do.

Experience

- BLG litigators act and have acted in some of the most notable cybersecurity cases in the country.
- BLG is defending one of the first class actions brought under the "intrusion upon seclusion" breach of privacy tort. The case is likely to be precedent-setting, in what is considered by many observers to be the fastest-growing area for class actions. BLG represents a "Big Five" Bank being sued for the criminal actions of a rogue employee alleged to have breached the privacy of customers of the Bank, which included electronically stored information. The matter will be proceeding to a common issues

trial, which will decide novel legal issues, including whether an employer can be vicariously liable for its employees' breach of privacy.

- BLG represented a financial services regulator named as a defendant in a class action regarding the loss of personal information contained on a portable computer. BLG was successful in obtaining the dismissal of the certification on the basis that the representative plaintiff suffered no compensable harm since his personal information was not used fraudulently.
- BLG presented a major automobile financing company named as a defendant in a class action regarding the loss of personal information that was stored on a data tape which was lost during transit.
- BLG was successful in obtaining a dismissal of the certification of the class action on the basis that the representative plaintiff suffered no compensable harm since his personal information was not used fraudulently.
- BLG represented a leading Internet search engine named as a defendant in a potential class action (now at the pre-certification stage) on behalf of persons whose electronic data was allegedly transmitted over unsecured wireless internet connection and whose personal information was allegedly intercepted.
- BLG represented a New York-based broker-dealer prosecuting an action to obtain emergency injunctive relief against a computer network service provider which refused to provide it with administrative passwords necessary for it to access essential functions such as email and the ability to print.
- BLG represented a major automobile financing company named as a defendant in a class action regarding the loss of personal information that was stored on a data tape which was lost during transit. The class action was certified on the basis that the representative plaintiff alleged that his personal information was used fraudulently.
- BLG represents numerous hospitals and healthcare institutions facing potential or actual claims relating to health care information, ranging from small individual breaches and large situations involving loss or theft of data storage devices.

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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