

Cyber Security and Privacy

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think: forward

Causes of Action

Intrusion upon Seclusion

Jones v. Tsige, 2012 ONCA 32

- Requires:
 - (a) intentional conduct (includes reckless conduct);
 - (b) an invasion of a person's private affairs or concerns without lawful justification;
 - (c) that a reasonable person would regard as highly offensive, causing distress, humiliation or anguish.

Class Actions

- Lost or misplaced information
 - o Condon v. Canada
- Employee snooping
 - o Moore & Shinold v. Capital District Health Authority
- Employee stealing information for third parties
 - Evans v. Bank of Nova Scotia
- Third party hacking
 - Lozanski v. The Home Depot Inc.



Vicarious Liability for Cybersecurity Matters

 Vicarious liability is imposed when the act is authorized by the company or the act is so connected with authorized acts that they are regarded as a mode of doing an unauthorized act.

Statutory Invasion of Privacy

- Requires:
 - a) A violation of an individual's privacy;
 - b) That it is done willfully; and
 - c) Without a claim of right.



Other Sources of Civil Liability

- Claims by Financial Institutions
- Claims by Shareholders

Mitigate the Risk: Insurance

Potential Applicable Policies

- Commercial general liability
- Errors and omissions
- Director & officer liability

Cyber Security Insurance

- Policies for losses resulting from cyber security incidents.
- Very little standardization.
- What may <u>not</u> be covered:
 - Social engineering losses
 - New hardware

- Software upgrades
- Third-party errors
- Third-party contract claims
 - P.F. Chang's China Bistro Inc v. Federal Insurance Company, 2016 WL 3055111
- Intellectual property theft and reputation damage

So What is Covered?

- First party coverage
 - Notification costs
 - Forensic investigation costs
 - Crisis management costs
 - Cyber Extortion costs
- Third party coverage
 - Network security costs
 - Privacy liability

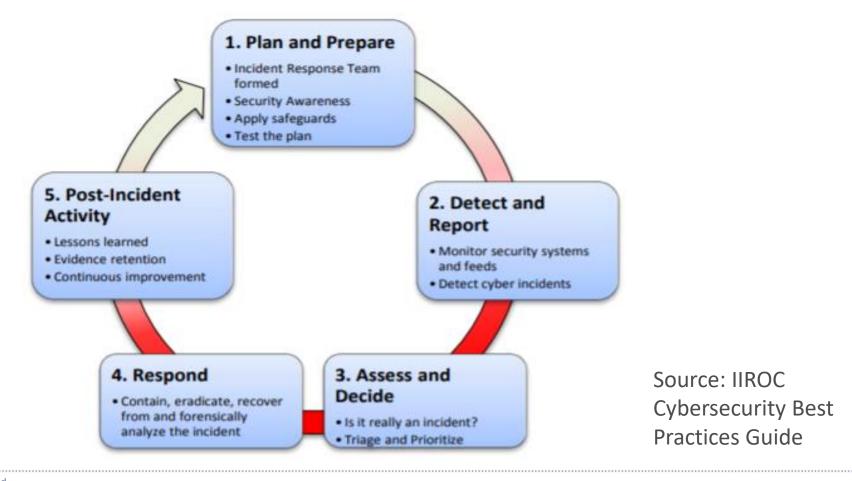
What is Effective Cybersecurity Governance?

- Increased cost of Cybersecurity attacks is resulting from detection and response times being too slow.
- Deficiencies in planning for incident response leaves organizations vulnerable if there is a breach.
- Directors of Canadian companies, consistent with their fiduciary duty and duty of care, need to exercise oversight over Cybersecurity risk.

 Liability can arise not from a cybersecurity breach itself, but from a failure to demonstrate that the board properly assessed and considered the risk.

 The bottom line is – the development of appropriate policies and procedures to manage and address Cybersecurity risk can demonstrate board care and diligence.

Components of a Cybersecurity plan:



Components of a Cybersecurity plan:

- Security safeguards/defensive plan
- Breach detection/monitoring
- Breach response
- Breach recovery
- Regular review

Organization and Board Buy-in:

- Responsibility
- Budget
- Education
- Training
- Regular reporting to the Board



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