

## Digital Security

# Ontario cybersecurity panel could shape privacy and data security legislation, say lawyers

By John Schofield

(November 5, 2020, 9:23 AM EST) -- The findings of an expert panel on cybersecurity recently formed by the Ontario government could significantly influence future privacy and digital security legislation in the province, say two lawyers with expertise in the field.

The 10-member panel, announced Oct. 15, is tasked with helping to modernize cybersecurity across Ontario's broader public sector and will provide advice on addressing sector-specific issues and risks to Government and Consumer Services Minister Lisa Thompson. It will submit a final report to Thompson in the fall of 2022.



Lyndsay Wasser, McMillan LLP

Governments across Canada are turning their attention to privacy and data protection, and the pandemic has only hastened that trend, said Lyndsay Wasser, co-chair of the privacy and data protection practice at McMillan LLP and co-chair of its cybersecurity practice.

"All types of organizations, whether they're public or private sector, are trying to shift things to online that typically would have been done in person in the past," she told *The Lawyer's Daily*.

"That means there's more information being transmitted over the Internet and online and being stored electronically and being transmitted electronically," she added, "so the more information that's in that format, the greater the vulnerability of the organization. And that already started before the pandemic, but certainly the pandemic has accelerated that shift to online services."

Dan Michaluk, a cybersecurity, privacy and information management lawyer with BLG who has worked extensively with Ontario's broader public sector, said he hopes the expert panel develops a comprehensive strategy that helps guide a "very necessary investment" in cybersecurity programming at public sector organizations.

"In the last couple of years, actual attacks from outsiders have become a serious concern for a lot of the organizations that I've worked with," he told *The Lawyer's Daily*. "The most prevalent type of attack that we've helped with are ransomware attacks. It's probably the number one concern in terms of outside cyberthreats for your average public sector institution in Ontario. We did seven of

them last year.”



Dan Michaluk, BLG

Account compromises are the next leading threat, he added. One of the largest this year has been the Blackbaud breach, involving a cloud-based software product that many educational institutions and other non-profits use for fundraising.

Wasser said recommendations of the cybersecurity expert panel could help shape the data security requirements in the private-sector privacy law that the Ontario government is currently consulting on — and could play into statutory reform of the province’s existing public-sector privacy legislation.

The government launched consultations in August aimed at improving the province’s privacy protection laws. Information and privacy commissioner Patricia Kosseim submitted her recommendations Oct. 16, calling among other things for a “better integrated and agile oversight mechanism to address complex data challenges.”

Unlike other provinces, Ontario does not have its own private-sector privacy law and Ontario businesses are subject to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), passed in 2000.

In the public sector, said Wasser, the government might take steps following the expert panel report to legislate or contractually commit organizations that receive public funding to implement the recommended controls.

“If they don’t implement some of the safeguards or address the risks that are highlighted in the report,” she added, “it might play into the analysis of liability in the event that there’s a data breach and the matter turns into litigation.”

Ontario public-sector organizations hit by significant data breaches in recent years include Lakeridge Health, Metrolinx, the City of Stratford and the Children’s Aid Society offices in Oxford County and Lanark, Leeds and Grenville, the government news release noted.

Michaluk said he hopes the expert panel will consider recommending cybersecurity legislation that promotes better “threat information sharing” among organizations, including so-called tactics, techniques and procedures (TTP) to protect against threats and “indicators of compromise.”

“In order to combat the hackers in what’s essentially a war, we really need to engage in better threat information sharing,” he said. “One of the issues in sharing, though, is that there’s a worry that when we share it with one organization, it’s going to be exposed to the world. Legislation could help with this problem by creating a safe space for that information.”

Public sector organizations are very vulnerable to cyberthreats because their information technology (IT) infrastructure tends to be decentralized and they have departments or divisions that operate differently and control different IT services, said Michaluk.

The rise of ransomware has made public sector groups even more of a target, said Wasser.

"It's a huge threat right now," she added. "And the reason that's relevant is because even if the data doesn't have resale value, the bad actors can still make money by ransoming it back to you. That just expands the net of who is a target with these types of things."

"As the threats of cyberattacks and hacking become more frequent globally, it's imperative that we take action now to improve our defences within the broader public sector," Thompson said in the news release. "Leveraging the skills and expertise of our panel members will allow us to strengthen the resiliency of our digital infrastructure as we collectively move more government programs and services online."

As part of its cybersecurity strategy, the Ontario government has also created the Cyber Security Centre of Excellence to support government ministries and the broader public sector. It also announced Oct. 1 an academic partnership with Ryerson University's Rogers Cybersecure Catalyst, a national centre for cybersecurity innovation.

*If you have any information, story ideas or news tips for The Lawyer's Daily please contact John Schofield at [john.schofield@lexisnexis.ca](mailto:john.schofield@lexisnexis.ca) or call 905-415-5891.*

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