

TORYS

Privacy Breach in Financial Services:

What's Coming and How to Avoid It

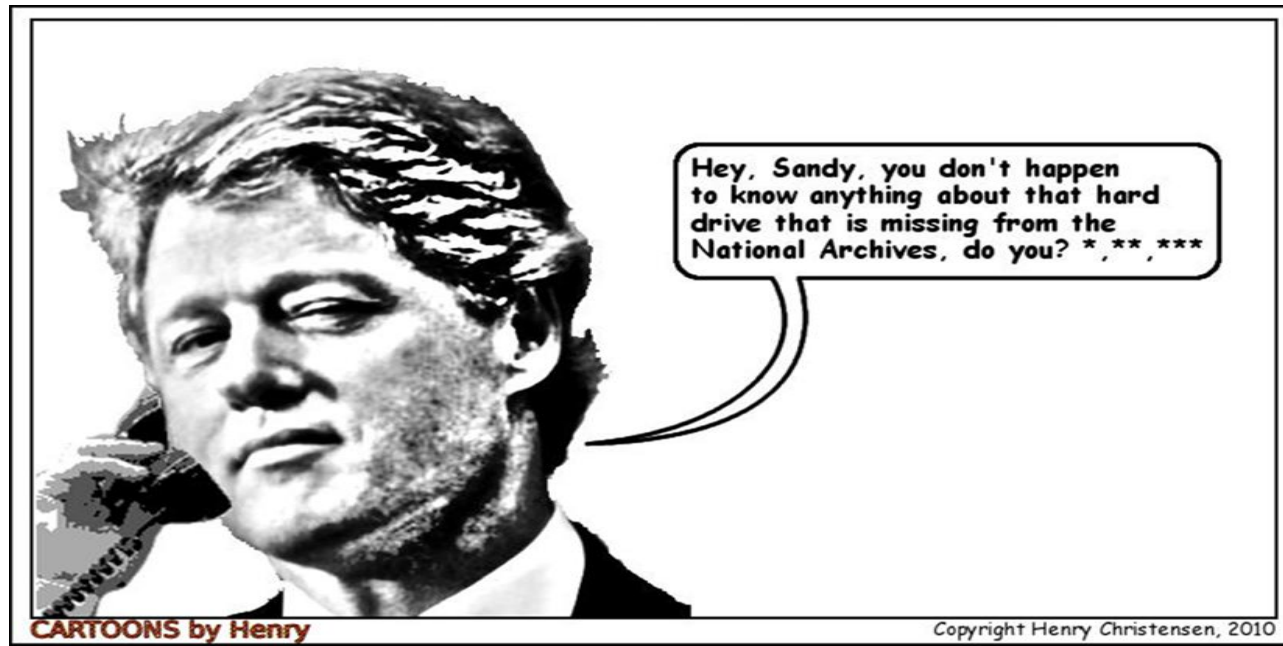
IIROC Breakfast Seminar

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- Latest Breach Stats and Common Scenarios for Claims
- Best Practices to Minimize the Risk of Breach
- Best Practices to Minimize Risk of Claims



- since 2005, **3818 incidents** of data breaches publicly disclosed involving **608,278,176 records** (*privacyrights.org*)
- 2011: **855 incidents** involving **174 million records** (*Verizon 2012 Data Breach Investigations Report*)
- Average size of breach (US): 28,349 records
- **Average cost (US): \$5.5 million**
- **Average loss of business due to breach: \$3 million** (*Poneman Institute, Cost of Data Breach Study, March 2012*)
- And in spite of all that...
 - **96% of Canadian businesses deny having had a privacy breach** (*Privacy Commissioner of Canada, Public Opinion Survey, February 2012*)

Who should be most concerned?

- Unfortunately, YOU
- Risks of claims increase with:
 - sensitivity of information compromised (financial info)
 - class action claims in the US are 6 x more likely when data compromised is financial in nature (risk of harm)*
 - number of records in issue
 - mean claim size in the US to 2013 is 5.3 million class members*
 - cause of breach
 - class claims more likely where disclosure caused by employee/systems error than hardware theft or organized hacking*
 - **Empirical Analysis of Data Breach Litigation*, Romanowsky et al., April 6, 2013

When?

- Two primary circumstances:
 - Claims from mishaps/crime
 - many of these
 - Claims challenging business practices (use and sharing of personal information)
 - few to date in Canada, lots in the US
- Breeding ground for claims:
 - Stolen or lost property (laptops, PDA, USB key, hard drives)
 - Other employee misconduct (fraud)
 - Poor business procedure or operational break-down
 - Failed IT process
 - Data transfer, including domestic and international outsourcing

Best Practices to Minimize Risk of Breach

- **Have a compliant privacy policy:**
 - Limit collection to that which is demonstrably necessary.
 - Describe the types of personal information collected and the reasons for the collection.
 - Clearly identify where information that is being sought is optional.
 - Explain the uses and disclosures that will be made of the personal information, including if it will be:
 - shared with other companies, including related companies
 - shared with service providers, and whether the information may be stored or processed outside Canada
 - specifically include right to disclose in connection with a sale of assets
 - Limit retention of personal information to only as long as required
 - **Endow your Chief Privacy Officer with real power to create the privacy culture**
 - **Develop internal policies and best practices for the collection, use and retention of personal data, train employees, and audit performance**
 - “no laptop in car policy” and simple password protection (no data encryption) is not enough
 - **Make it easy for individuals discovering a breach to report it**
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- **Have a breach response plan ready that delineates responsibility, steps and deploy it**
 - **Follow the Privacy Commissioners' (Alberta, BC, Canada) Breach Response Plans**
 - 1) Breach Containment and Preliminary Assessment
 - 2) Evaluate the risks associated with the Breach
 - 3) Notification (Those Affected, Regulators, Police)
 - 4) Prevention of Future Breaches
 - **Minimize damage to organization's reputation by developing public relations position and appropriate communications strategy (absence of timely notice in the right circumstances can be a claims prompting problem)**
 - **Learn from current breach to help prevent similar breaches in future**

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