



Canadian Tax & Legal Alert

Log4j vulnerability

What your legal team needs to think of

December 17, 2021

Information security experts around the world sounded a massive alarm on December 10 following the public disclosure of the Log4j vulnerability. It exposes hundreds of millions of devices to remote infiltration without any input from the victim. The widespread use of Log4j in enterprise software and the ease with which the flaw can be exploited requires immediate attention from system administrators, cybersecurity experts, and legal counsel.

What legal risks should be considered?

Liability for negligence

The critical nature of the Log4j vulnerability requires immediate remedial action in accordance with best practice, and potentially a fresh cyber security assessment. The corporation has a legal obligation to act diligently to prevent cyber incidents.

Not responding opens the door to personal liability of the board members and executives, class action, litigation, and administrative penalties. Parties to a contract that suffer a loss due to the others' inaction may also allege gross negligence, circumventing liability caps.

Potential data access, exfiltration, and ransomware

Unauthorized access into confidential systems raises privacy concerns and increases liability to victims and regulators. Obligations (including prompt notifications) may arise from general data privacy legislation (e.g., PIPEDA¹, GDPR²), industry-specific regulation (e.g., energy, banking, finance, health), and private agreements (PCI DSS³).

Contractual obligations and breach thereof

Taking systems offline may be an effective response but results in a breach of delivery obligations or service level agreements. Contracts should be reviewed with the help of counsel and experts to consider the cost-benefit of reactionary measures. If you have financing, or are contemplating an M&A transaction, your representations might need to be updated.

Contractual rights and resources

Review contracts with your IT or software service providers to confirm their obligation to address this vulnerability. If applicable, make sure to follow the steps to be indemnified in case of third-party claims. Review contracts with your end users and clients to confirm your own obligations to remediate (sometimes with a defined timeline) and notify.

Open-source software

Using open-source software raises complex additional legal issues: your code is public, revealing the existence of vulnerabilities, your service provider likely provided the code "as is", and you might not know whether open-source code has been implemented in your environment.

How can Deloitte help you?

Our multidisciplinary team of professionals from Deloitte Legal and Deloitte can support your remediation efforts and assist you in the response to a potential system compromise, all while minimizing the impact on your business. If you have questions on any of the above, please reach out to us.

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¹ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

² *General Data Protection Regulation*, EU 2016/679.

³ Payment Card Industry Data Security Standard.



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