BRITISH COLUMBIA LAW INSTITUTE

REPORT ON

Artificial Intelligence and Civil Liability

Introduction

The *Report on Artificial Intelligence and Civil Liability* advances recommendations for the adaptation of tort law to address harm caused by autonomous artificial intelligence. Tort is the area of law relating to redress for non-contractual civil wrongs causing harm to people and property. The term "autonomous artificial intelligence" means carried out with minimal or no direct human direction and control.

Why is it important?

Artificial Intelligence is being used widely across many sectors, ranging from medical diagnostics to finance, to streamline tasks and aid decision-making. However, concerns arise in fields like law enforcement and screening processes due to potential impacts on individuals' lives. AI systems, designed to operate with varying degrees of autonomy, rely on probabilistic inferences based on the recognition of patterns in data, which may not be accurate, complete or representative. How they arrive at particular decisions and other outputs is not always explainable. This creates challenges when applying tort law to address harm to individuals and property caused by autonomous AI actions. The rules of tort law were crafted to deal with harm caused by humans and rely on concepts such as fault, causation, intention, foreseeability and standards of care, all deeply rooted in human reasoning, experience and behavior.

What is in it?

- Explanation of what the term "artificial intelligence" is typically taken to mean, and its significant impact on tort law.
- Examination of different legal theories about civil liability for harm caused by AI.
- Issues that AI presents in applying conventional tort rules, stemming from features such as limited explainability and unpredictability.
- Discussion of how courts should approach setting the standard of care in negligence litigation involving AI in light of good practices for AI development and deployment.
- Recommendations for adapting conventional rules of tort law to deal with AI-related harm.
- A recommendation for a new remedy for discrimination from faulty AI decision-making not falling within the scope of human rights legislation.

Summary of the Recommendations

Rather than proposing a new law of torts to deal with AI-related harm, we made 9 recommendations to adapt existing rules to better ensure fair and just outcomes in AI-related tort cases. The main recommendation is that civil liability for harm caused by AI should be based on fault and not strict liability, which imposes liability for harm caused even in the absence of fault. Canadian product liability principles and ordinary principles of negligence can be applied to resolve cases of AI-related damage if modified as recommended in the report to take account of the special nature of AI systems. An evidentiary presumption is recommended to rebalance the judicial process in some circumstances when the limited explainability of some AI behaviour makes proof of fault practically impossible. The report also recommends a new tort remedy for forms of discrimination resulting from biased AI outputs that are not covered by human rights legislation. Read the report at the BCLI website **www.bcli.org/project/artificial-intelligence-and-civil-liability-project**.

About the British Columbia Law Institute

The BCLI is an independent not-for-profit law reform agency. We engage in scholarly research and analysis of existing laws to determine pathways for law reform for the public interest. Our goal is to provide clear and actionable insight for the purpose of improving laws in BC.

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Our work primarily takes place on the unceded territories of the the Musqueam (xʷməθkʷəy̓əm), Squamish (Skwxwú7mesh Úxwumixw), and Tsleil-Waututh (Səl̓ílwi ətaʔ/Selilwitulh) peoples.