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# First Annual Dentons Data Summit:

Navigating today's digital  
landscape

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# Roundup of the top cases

**Presented by:**

- **Chloe Snider, Partner, Dentons**
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# The highlights

1. Jurisdiction in the digital age
2. Privacy
3. Cryptocurrencies
4. CASL, AI Hodgepodge

# Jurisdiction in the Digital Age

# *Haaretz.com v. Goldhar, 2018 SCC 28*

- Plaintiff Canadian businessman owned soccer team in Israel, and sued Israeli newspaper for alleged defamatory article.
- Court held that was “publication” in Ontario (low bar).
- However, court held that most convenient forum was Israel and declined jurisdiction due to limited relationship with Ontario.



# Google Inc. v. Equustek Solutions Inc., 2017 SCC 34

- SCC upheld issuance of BC Supreme Court injunction requiring Google to cease indexing or referencing certain websites.
- Court had *in personam* jurisdiction permitted to grant injunction with extraterritorial effect.



# ***British Columbia (A.G.) v. Brecknell, 2018 BCCA 5***

- Building off of broad *Equustek* framework, the court assumed jurisdiction and required document production by Craigslist.
- Court held that Craigslist conducted business in BC and assumed jurisdiction despite lack of physical presence in BC.

# Jurisdiction and contracts

## *Douez v. Facebook, 2017 SCC 33*

- Forum selection clause not enforceable in the consumer context.

## *Wellman v. TELUS, 2019 SCC 19*

- Court allowed consumer claims to proceed by way of class proceeding (rather than by arbitration).
- Claims by corporate plaintiffs would need to proceed to arbitration under the arbitration clause.





# Privacy

# Certification cases – Developing law

- Courts have allowed privacy class actions to proceed even where there is a question as to whether there is a reasonable cause of action:
  - *Tucci v. Peoples Trust Company*, 2017 BCSC 1525
  - *Agnew-Americanano v. Equifax Canada*, 2018 ONSC 275



# Vicarious liability a concern...

## *Ari v. Insurance Corporation of British Columbia, 2019 BCCA 183*

- Privacy breach by an **employee**. Judge certified a class proceeding against ICBC, as the vicarious liability claim was not bound to fail, but excluded certain individuals from the class and refused to certify the appropriateness and amount of punitive damages as a common issue.
- Appeal allowed.

## *WM Morrison Supermarkets PLC v. Various Claimants, [2018] EWCA Civ 2339*

- English Court of Appeal upheld lower court decision that Morrison was legally responsible for the data leak caused by the deliberate malicious actions of a **disgruntled employee**.
- Morrison has been granted leave to appeal to the Supreme Court in first UK class-action case over a data leak.

# But common issues can be a problem....

## *Kaplan v. Casino Rama, 2019 ONSC 2025*

- Casino Rama targeted in cyber-attack in November 2016. Hacker obtained personal information relating to customers, employees, and suppliers.
- The casino refused a ransom demand and material posted online.
- No provable losses, insufficient common issues among proposed class members. Motion for certification dismissed.



# *Broutzas v. Rouge Valley Health System, 2018 ONSC 6315*

- Names of women who had just given birth were provided by nurses to sales persons for RRSPs.
- No compensable privacy invasion.



## ***Reference re: subsection 18.3(1) of the Federal Courts Act, R.S.C. 1985, c. F-7 (2019 FC 261)***

- Is there a right to be forgotten in Canada?
- Complainant to privacy commissioner took issue with outdated news article appearing when name entered into Google search, and specifically claiming right to be forgotten.
- CBC and consortium of media organizations failing to obtain intervenor status. Matter is ongoing.



# *T.(A.) v. Globe24h.com*, 2017 FC 114

- Potential extraterritorial application of Canadian privacy laws.
- Romanian publisher posting Canadian court and tribunal decisions online containing personal financial and medical information. Information easily searchable online.
- Court granting remedies pursuant to s. 16 of *PIPEDA* requiring removal of publication, steps to remove from cached search pages, and damages.



# Cryptocurrencies



# *Quadriga v. Fintech Solutions Corp. (Re)*, 2019 NSSC 65

- Highlights potential risks associated with exchanges.
- Sole officer and director of Quadriga passed away and assets missing.
  - Platform's 115,000 users owed roughly \$250,000,000 which could not be located.
- CCAA protection sought by company and representative counsel appointed for creditors.

# ***Canadian Imperial Bank of Commerce v. Costodian Inc., et al, 2018 ONSC 6680***

- Quadriga's sole director and shareholder transferred customer deposits to the bank account of payment processor, Costodian, then to personal account.
- The bank froze Costodian's account, which had CAD \$25.7 million and USD \$69,000 in deposits.
- Court granted interpleader order, permitting the bank to pay disputed funds into court pending resolution of claims.

# *Copytrack Pte Ltd. v. Wall*, 2018 BCSC 1709

- Are cryptocurrencies goods or currency?
  - Characterization will impact claims that may be brought and rights and obligations of holders.
- Court declined to characterize on summary judgment application.
- Recent Israel case characterizes cryptocurrencies as an asset (not a currency)

# Slide decks, social media and YouTube

## *Autorité des marchés financiers c. Technologies Crypto inc., 2019 QCTMF 5*

- Solicitation of investing public and distribution of investment contracts related to a cryptocurrency mining venture, including through:
  - website of Crypto Technologies Inc. at [www.mkitmine.com](http://www.mkitmine.com)
  - Facebook page of respondent Crypto Technologies Inc.
  - promotional video posted on YouTube
  - phone conversations and emails  
(including with an AMF investigator,  
acting under the fictitious identity of a potential investor)

## *NextBlock Global Limited (Re), 2019 ONSEC 14*

- Representations in a slide deck about involvement of certain blockchain industry participants

# Other hot topics

# ***Brian Conley, Re, 2019 CarswellNat 1301***

- CRTC imposing \$100,000 penalty on Brian Conley for violation of Canadian anti-spam legislation (“CASL”).
- Operating under many business names, including nCrowd, sent unsolicited commercial emails to Canadians including promotional vouchers for discounted rates on products.
- Numerous complaints submitted and CRTC finding violation of CASL.

# *Naruto v. Slater*, 888 F.3d 418 (2018)

- Could AI created art be copyrighted?
- PETA sued on behalf of Naruto, a crested Macaque, whose selfie had been published by the defendants.
- U.S. Court of Appeals for the Ninth Circuit held that Naruto had no standing to sue under the Copyright Act.
- Suggests, perhaps, a similar result for AI claims.

# Credits

- David Wotherspoon – Litigation Partner, Vancouver
- Matthew Sveinson – Litigation Associate, Vancouver
- Noah Walters – Summer Student, Toronto



# Key contacts



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