



# Law and Artificial Intelligence

## Panel one: The Risks and Rewards of Emerging Technologies

CIAJ 2019 Annual Conference - Oct. 16, 2019

Justice Lorne Sossin

# Outline

- ▶ The proposition - The role of AI in the justice system is becoming both more pervasive throughout the legal life cycle - and less transparent
- ▶ Legal Life Cycle
- ▶ How AI is transforming the Legal Life Cycle
- ▶ Challenges
- ▶ Questions

# Legal Life-Cycle

- ▶ Identification of Dispute
- ▶ Legal information
- ▶ Legal Advice
- ▶ Early Dispute Resolution (negotiation, mediation, etc)
- ▶ Hearing & Adjudication
- ▶ Orders and enforcement

# How Is AI & Machine Learning Transforming the Legal Life Cycle?

- ▶ 1) Rise of legal information, legal advice chatbots and A2J digital services (“[Steps to Justice](#)” “[Clicklaw](#)”) “[Legal Line](#)”)
- ▶ 2) Rise of “Robot Lawyers,” e-Discovery, legal research, smart contracts, automated pleadings; AI-driven litigation strategy (“[Do Not Pay](#)”, “[Ross Intelligence](#)” “[Willful](#)” “[Legal Zoom](#)” “[Wonder.Legal](#)” “[Clausehound](#)” “[Beagle](#)”)
- ▶ 3) Rise of predictive analytics (“[Blue J Legal](#)” “[Lex Machina](#)”)

# Embedding AI in Law

- ▶ 4) Rise of AI in public decision-making
- ▶ The 2018 U of T IHRP/Citizen Lab report, [Bots at the Gate: A Human Rights Analysis of Automated Decision-Making in Canada's Immigration and Refugee System](#) looks at the ways the Canadian government is considering using automated decision-making in the immigration and refugee system, and the dangers of using AI as a solution for rooting out inefficiencies.
- ▶ The problem at the core of automation, according to report co-author Petra Molnar, is that algorithms are not truly neutral.
- ▶ “They take on the biases and characteristics of the person who inputs the data and where the algorithm learns from,” she says. “The worry is it's going to replicate the biases and discriminatory ways of thinking the system is already rife with.”

# Embedding AI in Law

- ▶ “The introduction of automated systems can impact both the processes and outcomes associated with decisions that would otherwise be made by administrative tribunals, immigration officers ... and others responsible for the administration of Canada’s immigration and refugee system.
- ▶ Automated decision systems are likely to have important human rights implications regardless of whether they operate autonomously and in lieu of a human decision-maker, or whether their outputs are simply one factor considered by a human in rendering a final decision. ...
- ▶ This analysis therefore includes systems that:
  - ▶ • Classify cases, applications, or individuals for triage (e.g., in terms of risk, priority, or complexity);
  - ▶ • Generate scores, probability assessments, and other indicators for consideration as factors to support a human decision-maker’s reasoning;
  - ▶ • Identify or “flag” certain cases for human review or investigation;
  - ▶ • Provide overall recommendations about whether an application should be approved; or • Render the complete administrative decision.”

# The Challenges

- ▶ The Pace and Scope of Tech Change vs. Law Reform
- ▶ Governance - who is supervising coders, companies and chatbots where there is often no professional regulator, code of conduct, etc?
- ▶ Transparency - proprietary code vs. intelligible metadata; what disclosure allows for genuine accountability in machine learning context?
- ▶ Accountability - who is accountable for those harmed by actions of AI “Can You Sue a Robocar”?
- ▶ Implicit Bias, big data and the problem of outliers; who regulates the data on which AI relies?
- ▶ The emergence of the Reasonable Algorithm standard and other legal frontiers of AI?

# The Big Picture

- ▶ In May 2019 OECD, adopted “[5 Principles on AI](#)”
- ▶ 1) AI should benefit people and the planet by driving inclusive growth, sustainable development and well-being.
- ▶ 2) AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards - for example, enabling human intervention where necessary - to ensure a fair and just society.
- ▶ 3) There should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.
- ▶ 4) AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.
- ▶ 5) Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.
- ▶ In June 2019, the [G20 adopted human-centred AI Principles](#) that draw from the OECD AI Principles.