

# The growing intersection of AI and class action litigation

---

## AUTHORS



Anne Merminod



Julie Himo



Sylvie Rodrigue



Lauren Nickerson

In privacy law and data protection, AI systems are increasingly scrutinized for potential violations, especially as they process vast amounts of personal data<sup>1</sup>. Class actions targeting companies for data breaches or improper data handling practices are on the rise, frequently revolving around the collection, storage, and use of data in relation to AI systems. For instance, in the United States, there has been a surge in class actions alleging that companies improperly obtained individuals' biometric identifiers through AI-based machine-learning systems<sup>2</sup>. This trend is also emerging in Québec, where, in 2024, a class action was authorized under privacy legislation against a company accused of "scraping" images of unsuspecting individuals from various websites and platforms<sup>3</sup>. These images were processed and converted into facial vectors, creating facial prints of each individual based on biometric data extracted from the images. The collected information was then sold and made accessible to third-party customers.

In the employment context, class actions concerning algorithmic discrimination in the hiring process, stemming from the use of AI in decision-making, have been filed in the United States. Companies that develop or use AI software designed to screen job applicants based on criteria such as age, ethnicity and disability may be held liable if the software exhibits hiring biases<sup>4</sup>. Businesses deploying AI in their hiring processes should exercise caution in selecting

their software and are encouraged to actively monitor its impact to mitigate their risk of liability in discrimination lawsuits based on algorithmic bias. Additionally, some jurisdictions—including Ontario and New York City—have laws in place requiring businesses to disclose the use of AI in their hiring processes<sup>5</sup>. In Québec, privacy legislation also requires organizations to notify individuals when they render a decision based exclusively on an automated processing of personal information.

Concerns over algorithmic bias extend beyond the employment context. In Illinois, for example, a claim was brought against an insurance company for allegedly using an AI system that discriminated against Black policyholders<sup>6</sup>.

AI has also made its way into consumer fraud class actions. Notably, in Illinois, a class action was filed against an online subscription service using AI-powered “robot lawyers” to provide legal services to consumers<sup>7</sup>. The plaintiff claimed the defendant did not employ licensed attorneys and was not licensed to practice law, leading to allegations of consumer fraud, deceptive practices under Illinois law, and trademark infringement.

Similarly, in antitrust and competition law cases, AI’s role in price-fixing, market manipulation, and collusion offers new grounds for class action<sup>8</sup>. This presents a new compliance challenge for companies using price-matching and monitoring algorithms or blockchain technology to facilitate smart contracts, especially in markets with a few dominant players. The courts will face the challenge of determining liability for AI-driven decisions and actions, which will depend on the specific circumstances of each case.

The copyright domain also faces disruptions, with AI-generated content blurring the lines of ownership and infringement. Class actions in this area often intersect with questions of authorship and the misuse of copyrighted materials by AI<sup>9</sup>. Courts are likely to face challenges in determining whether AI companies are infringing on protected works through their technology, whether AI data sets themselves constitute infringing works, and to what extent the creation of those datasets involves the copying of protected works. In the United States, several cases are already underway<sup>10</sup>.

Moreover, AI’s influence on financial markets has given rise to securities class actions, where plaintiffs argue that AI-driven trading or analysis has led to financial losses due to securities fraud<sup>11</sup>.

As Canada often looks to U.S. litigation as a predictor, these developments signal a future where AI and class actions will intersect, shaping the legal landscape on both sides of the border. We will continue to monitor new class actions being filed across Canada.

## FOOTNOTES

<sup>1</sup>. The authors gratefully acknowledge the contributions of articling student Gabrielle da Silva to this publication.

<sup>2</sup>. See e.g. *ACLU v. Clearview AI, Inc.*, 2021 Ill Cir. LEXIS 292 (settled); see also *Frasco v. Flo Health, Inc.*, 21-cv-00757-JD (N.D. Cal. filed Sept 23, 2024) (ongoing).

<sup>3</sup>. See *Doan c. Clearview AI inc.*, 2024 QCCS 3968; *Option Consommateurs c. Flo Health Inc.*, 2022 QCCS 4442; *Lam v. Flo Health Inc.*, 2024 BCSC 391. See also *Homsy v. Google*, 2024 QCCS 1324, where the Québec Superior Court authorized a class action where plaintiffs alleged Google breached privacy laws by obtaining and using the biometric data of consumers who uploaded photos to Google Photos without consumer consent.

<sup>4</sup>. See *Equal Employment Opportunity Commission v. iTutorGroup, Inc. No. 1:22-cv-2565 (E.D.N.Y. filed May 5, 2022)*, *Mobley v. Workday, Inc.*, No. 23-cv-00770-RFL, 2024 U.S. LEXIS 126336. See also Gerald L. Maatman Jr., Alex W. Karasik, and George J. Schaller, [Artificial Intelligence Litigation Risks in the Employment Discrimination Context](#), *Journal of Emerging Issues In Litigation*, vol. 4, n° 2, Spring 2024, p. 96.

<sup>5</sup>. Bill 149, [Working for Workers Five Act, 2024](#), Ontario, Schedule 2 (provisions not yet in force); [A Local Law to amend the administrative code of the city of New York, in relation to automated employment decision tools](#), 2021/144, New York City Council.

<sup>6</sup>. *Huskey v. State Farm Fire & Cas. Co.*, 22 C 7014 (N.D. Ill., filed September 11, 2023).

- [7.](#) *MillerKing LLC, et al. v. DoNotPay Inc.*, 23-CV-863 (S.D. Ill., filed November 17, 2023).
- [8.](#) The Competition Bureau (the Bureau) conducts ongoing work to better understand how AI might affect competition. The Bureau recently published [a discussion paper](#) exploring its concerns about the concentration of AI capabilities in a few dominant companies. Private plaintiffs and U.S. enforcement agencies have targeted hotels, apartment management companies and insurers, alleging illegal collusion through the shared use of price-setting databases. On September 30, 2024, a case was dismissed by the U.S. District Court for the District of New Jersey accusing Atlantic City hotel-casinos of inflating room rates through the collective use of Cendyn Group’s Rainmaker software. A class action filed in Illinois on September 10, 2024 claims a series of hotel chains and technology companies knowingly and intentionally use the same pricing algorithm to set room rates and occupancy levels to achieve supercompetitive rooms and rates (see *Gonzalez v. Integrated Decisions and Systems, Inc. d/b/a Ideas Revenue Solutions*, 1:24-cv-08262 (N.D. Ill., filed September 10, 2024)).
- [9.](#) See for example, this [claim](#) filed July 8, 2024, requesting that the Canadian Intellectual Property Office expunge from the Copyright Registrar an artwork authored in part using an Artificial Intelligence tool. See also [news](#) of a recent claim in British Columbia filed by CanLII, alleging AI company CasewayAI bulk-downloaded and scraped 3.5 million records from CanLII’s platform.
- [10.](#) Recently, the Southern District of New York dismissed a copyright infringement claim brought by news organizations against OpenAI. The Court cited a lack of standing, holding that the news organizations introduced no evidence of the actual use of any of the alleged copyrighted material (see *Raw Story Media, Inc. v. OpenAI, Inc.*, 1:24-cv-01514 (SDNY, November 7, 2024)). See also *Guild v. OpenAI Inc.*, 1:23-cv-08292 (SDNY); *Alter v. OpenAI Inc.*, 1:23-cv-10211 (SDNY); *Basbanes v. Microsoft Corporation*, 1:24-cv-00084 (SDNY); *Andersen v. Stability AI Ltd.*, 3:23-cv-00201 (ND Cal); *The Center for Investigative Reporting v. OpenAI, Inc.*, 1:24-cv-04872 (SDNY); *Concord Music Group, Inc. v. Anthropic PBC*, 5:24-cv-03811 (ND Cal); *Daily News LP et al v. Microsoft Corporation et al*, 1:24-cv-03285 (SDNY); *Doe 1 v. GitHub, Inc.*, 4:22-cv-06823 (ND Cal); *Huckabee et al v. Bloomberg LP et al*, 1:23-cv-09152.
- [11.](#) The Cornerstone Research reported its [2024 mid-year assessment](#) of U.S. securities class action filings, spotlighting that D&O litigation arising out of AI disclosures is increasing. Specifically, the report detailed that six AI-related federal securities class actions were filed in the first half of 2024. As Cornerstone warned, “[w]hile AI-related filings are not new, the growing prominence of AI in the business models of many companies may lead to an increase of such filings in the future”.

*To discuss these issues, please contact the author(s).*

*This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.*

*For permission to republish this or any other publication, contact [Richard Coombs](#).*

© 2026 by Torys LLP.

*All rights reserved.*