



ALGORITHMS AND THE LAW

BIAS & PRIVACY

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LEARNING OBJECTIVES

- understand concepts and definitions of artificial intelligence and algorithms
- learn the legal issues that can arise where algorithms are being used and understand the legal issues that may arise for in-house counsel
- have an overview of applicable law (including New Zealand case law)

ALGORITHMIC BIAS

- Concepts of bias
 - Lawyers: bias in administrative and human rights law
 - Statisticians: selection bias
 - Algorithmic bias: extrinsic and intrinsic

BIAS IN



BIAS OUT

Oprah Winfrey



amazon



**“AIN’T I A WOMAN?” ASKS OPRAH.
AMAZON SAYS PROBABLY NOT...**

JOY BOULAMWINI (2018)

BIAS & DEFINING “FAIR”

- Diverse algorithmic definitions of ‘fairness’ (Corbett-Davies et al 2017)
 - “anti-classification” - leave out certain classifiers e.g. gender and race
 - “classification parity” - common measures of predictive performance are equal across all groups
 - “calibration” – outcomes are independent after controlling for estimated risk
- Concepts of fairness in law
 - Human Rights Act
 - Bill of Rights Act *R v Hansen*

PRIVACY: PERSONAL INFORMATION

- Machine learning and re-purposing data, collection and consent
- Using de-identified data sets to create anonymous profiles
- Re-identification
- Use of data sets

ISSUES IN PRACTICE

- Policy development and service design
- Contracting for new services and products
- Which agency holds or controls the data for purposes of Privacy Act?
- Access, correction, accuracy and deletion of personal information
- Requests for information

CASE LAW AND COMMENTARY

- *Naidu v Australasian College of Surgeons* [2018] NZHRRT 234
- Glazebrook J “Risky Business: Predicting Recidivism” (2010) 17(1) *Psychiatry, Psychology and Law* 88
- *J v Care Coordinator* [2018] NZHC 1209 Cull J on risk assessment tools, citing *R v Peta* [2007] NZCA 2 NZLR 627 with approval
- *Ewert v Canada* [2018] SCC 30

NEW / EMERGING ISSUES

- Correcting bias eg diversify training sets?
- Status of inferred data and right to reasonable inferences
- New tools
 - Ministry of Social Development: Privacy, Human Rights and Ethics
 - Principles for safe and effective data use, privacy/algorithmic impact assessments
- Regulatory concerns and law reform

FURTHER READING

- Algorithmic Assessment Report (2018) Department of Internal Affairs and Statistics NZ
- Liddicoat, Gavaghan, Knott, Maclaurin & Zerilli “The use of algorithms in the New Zealand public sector” (2019) New Zealand Law Journal 27