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Canadian Courts Have Jurisdiction to Address Misappropriation by AI Companies

In *Toronto Star Newspapers Limited v OpenAI Inc*, the Ontario Superior Court delivered a significant ruling on the jurisdiction of Ontario (and Canadian) courts to determine disputes relating to the misappropriation of content by artificial intelligence (AI) companies.

This decision sets a precedent for AI accountability in Canada, affirming that foreign tech companies offering services in Canada can face litigation here – even for internet-based conduct. It underscores that Canadian courts will not shy away from asserting jurisdiction where local rights are implicated, particularly in the evolving landscape of AI and copyright.

OpenAI Challenges Ontario Court's Jurisdiction

In 2024, Canada's leading news media companies (the Toronto Star Newspapers, Metroland Media Group, Postmedia Network, the Globe and Mail, the Canadian Press, and CBC/RSC) commenced an action before the Ontario Superior Court for copyright infringement, circumvention of technological protection measures, breach of contract, and unjust enrichment against OpenAI (and its multiple corporate entities) relating to OpenAI's unauthorized use of the Canadian news media companies' proprietary content for commercial purposes.

OpenAI moved to stay or dismiss the claim, arguing the Ontario court lacks jurisdiction over the parties (*in personam* jurisdiction/jurisdiction *simpliciter*) and over the subject matter of the dispute. In the alternative, it argued that even if the Ontario court has jurisdiction, the Court should decline to exercise that jurisdiction because the United States is the more appropriate forum.

The Court Dismisses OpenAI's Motion, Finding that the Ontario Court Has Jurisdiction

The Court has *in personam* jurisdiction over OpenAI – A court may presumptively assume jurisdiction over a dispute where one of five factors is present:

1. The defendant is domiciled or resident in the province.
2. The defendant carries on business in the province.

3. The tort was committed in the province.
4. A contract connected with the dispute was made in the province.
5. Property related to the asserted claims is located in the province.

In assessing these factors, the Court found:

- A number of the OpenAI defendants carried on business in Ontario. Among other things, they operate web crawlers that collect data from websites and web applications in Canada and use that content to develop OpenAI models, make contractual arrangements in Ontario, develop and augment their models by prompts from users in Ontario, advertise to customers in Ontario, and contract with customers in Ontario.
- A number of the OpenAI defendants committed wrongful acts in Ontario. On the basis of the evidentiary record before the Court, and reading the pleadings "liberally," there was a good arguable case the alleged wrongdoing – web crawling, scraping, and model training, including unauthorized reproduction of the plaintiffs' content – is sufficiently connected to Ontario.
- A number of the OpenAI defendants were party to Ontario-based contracts, arising from their accessing the plaintiffs' respective websites, which each include terms of use that create a contract between those accessing the plaintiffs' websites and the respective plaintiff.
- A number of OpenAI defendants were unjustly enriched from profits of wrongful acts committed in Ontario by direct and indirect subsidiaries carrying on business in Ontario.
- The Court concluded that, considered together, the overall connection between the OpenAI defendants and Ontario was not weak and was not rebutted.

The Court has jurisdiction over the subject matter of the dispute – "Unlike an administrative tribunal or the Federal Court of Canada, this court always has inherent jurisdiction unless that jurisdiction is ousted" by statute or an arbitral agreement. As there are no sections of the *Copyright Act* that oust the Court's jurisdiction over the breach of contract and unjust enrichment claims, and no party sought to rely on any arbitration clauses, the Court concluded it has subject-matter jurisdiction over all asserted claims.

The United States is not a clearly more appropriate forum – Having determined that jurisdiction was established, the Court

turned to the issue of *forum non conveniens*, which involves an assessment of whether another forum is clearly more appropriate for the adjudication of the dispute. On the basis of the relevant factors the Court concluded that OpenAI had not met its burden to show the United States is a more appropriate, suitable, and convenient forum for the litigation to proceed. Rather, when the relevant contextual factors are "considered individually and collectively, they favour Ontario as the more appropriate, suitable and convenient forum for the adjudication of these claims."

As the Court stated, "On the whole, the fair and efficient working of the legal system in Canada favours allowing Canadian authors of Canadian-created Works with claims against foreign companies for breaches of Canadian copyright and other laws to pursue those claims here. This is the case if they are demonstrated to be claims against parties over which this court has jurisdiction, as they have been in this case."

The Court accordingly concluded that it has jurisdiction over the claims and the claims against OpenAI Inc, OpenAI OpCo LLC, OpenAI LLC, OpenAI Holdings LLC, OAI Corporation, and OpenAI Global can proceed in Ontario.

Key Takeaways

- **Internet-based businesses can be found to conduct business in a province** – "Internet based businesses are ubiquitous," and can be found to carry on business in Ontario where their business activities, considered in the context of their business as a whole, are sufficiently connected to Ontario.
- ***In personam* jurisdiction must generally be established for each defendant** – As the Supreme Court recently observed in *Sinclair v Venezia Turismo*, the standard for establishing a presumptive factor to allow the Court to assume jurisdiction is "low" but must be examined for each defendant, except potentially in circumstances where there are allegations of agency, improper purpose, fraud, or conspiracy under a single controlling mind.
- **If an Ontario court has jurisdiction, it should exercise it unless clearly inappropriate** – Where a Canadian court has jurisdiction, that jurisdiction should be exercised, except where it is shown that another forum is a "clearly more appropriate, suitable and convenient forum than Ontario… It is not a matter of flipping a coin."

Lenczner Slaght acts for Canada’s leading news media companies (the Toronto Star Newspapers, Metroland Media Group, Postmedia Network, the Globe and Mail, the Canadian Press, and CBC/RSC) in their legal action against OpenAI.