Published on 6 June 2025

Case Comment

CHATBOTS AND LIABILITY FOR NEGLIGENT MISREPRESENTATION

Moffatt v Air Canada 2024 BCCRT 149

[2025] SAL Prac 16

Through an analysis of the decision in *Moffatt v Air Canada* 2024 BCCRT 149, this piece unpacks some of the issues raised in the context of private law when chatbots provide inaccurate information. As the authors point out, it is important to frame the issues properly, and the critical point is whether the chatbot in question is deterministic or non-deterministic. To that end, it is also important that lawyers continue to keep up to date with developments in technology.

SOH Kian Peng[1]
Magistrate/Assistant Registrar, Family Justice Courts, Singapore; Adjunct Faculty, Yong Pung How School of Law, Singapore Management University.

Vanessa **NG**[1]
Practice Trainee, Rajah & Tann Singapore LLP.[2]

I. Introduction

1 One inescapable fact of modern living is that we spend a fair bit of our lives navigating the virtual realm of the Internet.

1 The case comment is written in the authors' personal capacities. The opinions expressed in the case comment are entirely the authors' own views and do not reflect the views or positions of the entities the authors belong to. The authors are both grateful to Ms Elaine Lum for her excellent copyediting, and to the editor of the *SAL Practitioner (Technology)*, Mr Lam Chung Nian, for his feedback on an earlier draft that greatly improved the piece.

2 At the time of writing, the author was a research assistant at the Yong Pung How School of Law, Singapore Management University.

In our quest to find the best deals in our online shopping, or simply to gather more information about certain products or services, we would have, in all likelihood, sought the assistance of a chatbot. While chatbots may give the impression that we are conversing with another human being, they are, simply put, computer programs designed to engage with users using normal language.[3] The use of chatbots, however, have spawned a whole host of potential legal issues[4] ranging from data protection[5] to the realm of intellectual property law.[6] In *Moffatt v Air Canada*[7] ("*Moffatt*"), which is the subject of this case comment, a Canadian tribunal had the opportunity to consider whether a company was liable for negligent misrepresentation arising out of inaccurate information provided by its chatbot.

II. Facts and decision in *Moffatt*

2 The claimant, Jake Moffatt ("Mr Moffatt"), had, following his grandmother's death on 11 November 2022, booked a flight with Air Canada from Vancouver to Toronto. In his search for flight tickets, Mr Moffatt had used a chatbot on Air Canada's website which had suggested that he could apply for bereavement fares retrospectively, but any such application had to be made within a 90-day period.[8] Air Canada did indeed provide such reduced rates for passengers traveling due to the death of an immediate family member.[9] Apart from the information provided by the chatbot, Mr Moffatt also spoke with an Air Canada representative

3 Crenguta Leaua & Iulia-Alexandra Didu, "Chatbots. Legal Challenges and the EU Legal Policy Approach" (2021) 10(3) *Perspectives of Law and Public Administration* 210 at 211. See also Kurt Rowe, "The Rise of the Machines, "A New Risk for Claims" (2018) *Journal of Personal Injury Law* 302 at 305 and Mirka Snyder Caron, "The Transformative Effect of AI on the Banking Industry" (2018) *Banking & Finance Law Review* 169 at 178.

4 See Clive Davies, "Legal Liability for the Actions of Chatbots" (2022) 27(3) *Communications Law* 125.

5 See *Ticketmaster UK Limited v Inbenta Technologies Limited* (2021) WL 05585718.

6 This is especially so for artificial intelligence ("AI")-powered chatbots. See Nicola Lucchi, "ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems" (2024) 15(3) *European Journal of Risk Regulation* 602.

7 2024 BCCRT 149.

8 *Moffatt v Air Canada* 2024 BCCRT 149 at [2], [13] and [19].

9 *Moffatt v Air Canada* 2024 BCCRT 149 at [13].

who told him that the fare for each flight would be about $380.[10] Relying on the information given to him by the Air Canada representative as well as the chatbot, Mr Moffatt went ahead and booked a one-way flight from Toronto to Vancouver, departing on 18 November 2022 for $845.38.

3 Mr Moffatt later submitted the first application for the bereavement fare on 17 November 2022 – this was well within the 90-day period based on the information provided by the chatbot. What followed was some to-ing and fro-ing over e-mail between Mr Moffatt and Air Canada, as Mr Moffatt attempted to receive a partial refund of his fares. On 5 February 2023, Mr Moffatt e-mailed Air Canada with a screenshot of the information provided by the chatbot, and confirmed that he had complied with all the necessary steps to claim the bereavement rate.

4 Three days later, an Air Canada representative replied, admitting that the chatbot had misled Mr Moffatt. Despite a further exchange of e-mails, the parties did not reach a resolution. Mr Moffatt subsequently brought a claim against Air Canada in the Civil Resolution Tribunal ("Tribunal") which had jurisdiction over small claims, and whose mandate was to provide an accessible, quick, economical, informal and flexible form of dispute resolution.[11]

5 The Tribunal found, as a preliminary point, that Mr Moffatt was alleging negligent misrepresentation (though he did not specifically use those words). To succeed in his claim, Mr Moffatt therefore had to establish that Air Canada owed him a duty of care, that its representation was untrue, inaccurate or misleading, that Air Canada had made that representation negligently, and that he had relied on that misrepresentation and suffered loss.[12]

6 The Tribunal found that Air Canada owed Mr Moffatt a duty of care given the commercial relationship between the

10 *Moffatt v Air Canada* 2024 BCCRT 149 at [19].
11 *Moffatt v Air Canada* 2024 BCCRT 149 at [7].
12 *Moffatt v Air Canada* 2024 BCCRT 149 at [25].

parties of a service provider and consumer,[13] and that Air Canada had failed to take reasonable care to ensure that the information provided by its chatbot was accurate.[14] In arriving at this conclusion, the Tribunal rejected Air Canada's argument that the chatbot was a separate legal entity responsible for its own actions and that Mr Moffatt could have found the correct information on another part of its website.[15] After all, the chatbot was part of Air Canada's website, and Air Canada should be responsible for all the information on its website.[16] There was also, in the Tribunal's view, no reason why customers should have to double-check information found on one part of the website with that on another part of the website.[17]

7 The Tribunal also concluded that Mr Moffatt had relied on the information given to him by the chatbot. His actions in investigating options for the bereavement fares and pursuing his claim for the partial refund in line with information provided by the chatbot was proof of this.[18] Finally, the Tribunal rejected Air Canada's attempt at avoiding liability by relying on certain contractual terms – the relevant portions of the contract which Air Canada relied on were simply never placed before the Tribunal.[19] As a result, Mr Moffatt's claim succeeded and he was awarded $812.02.[20]

III. Observations

8 One might observe that Air Canada's argument, that the chatbot was a separate legal entity responsible for its own actions, was an attempt to escape the established rules of attribution at law that are commonly "deployed to deem one's actions (or liability) as another's".[21] Air Canada's argument was premised

13 *Moffatt v Air Canada* 2024 BCCRT 149 at [26].
14 *Moffatt v Air Canada* 2024 BCCRT 149 at [28].
15 *Moffatt v Air Canada* 2024 BCCRT 149 at [27]–[29].
16 *Moffatt v Air Canada* 2024 BCCRT 149 at [27].
17 *Moffatt v Air Canada* 2024 BCCRT 149 at [28].
18 *Moffatt v Air Canada* 2024 BCCRT 149 at [30].
19 *Moffatt v Air Canada* 2024 BCCRT 149 at [31].
20 *Moffatt v Air Canada* 2024 BCCRT 149 at [44].
21 Jerrold Soh, "Legal Disposition and Artificially-Intelligent Attributions" (2023) 43(4) *Legal Studies* 583 at 586

on two things. First, that the chatbot in question was powered by artificial intelligence ("AI"), and second, that the established rules of attribution did not, or should not, apply to AI.[22] The first premise, that the chatbot in question was powered by AI, cannot simply be assumed. Broadly speaking, chatbots may be divided into two groups – the first are simple chatbots that are rule-based, or pre-programmed according to decision trees.[23] These chatbots work in the following manner: for the input "X", return the following response, "Y". In short, such chatbots are what has been termed "deterministic" algorithms – these are programs that will always produce the same output given the same input and are incapable of responding to varying conditions.[24] And if the chatbot in question was indeed "deterministic" in nature, it would be quite difficult to escape liability on the basis that one had no control over its output.

9 The second type of chatbots are those powered by large language models, the same type of technology deployed in generative AI tools such as ChatGPT.[25] Such programs are vastly different from deterministic programs in that, on the surface, they appear to be able to respond to varying conditions. Programs such as ChatGPT operate by using "statistical optimisation to infer patterns from data".[26] In layperson's terms, when one keys in a query into ChatGPT, the algorithm analyses the input and produces a result based on that analysis. However, the temptation

22 Jerrold Soh, "Legal Disposition and Artificially-Intelligent Attributions" (2023) 43(4) *Legal Studies* 583 at 586.

23 Crenguta Leaua & Iulia-Alexandra Didu, "Chatbots. Legal Challenges and the EU Legal Policy Approach" (2021) 10(3) *Perspectives of Law and Public Administration* 210 at 212. See also Rafael Mellado-Silva, Antonio Faúndez-Ugalde & María Blanco Lobos, "Learning Tax Regulations Through Rules-Based Chatbots Using Decision Trees: A Case Study at the Time of COVID-19" (2020) *2020 39th International Conference of the Chilean Computer Science Society (SCCC)* 1.

24 *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20 at [15]; Goh Yihan, "Contractual Consent in the Age of Machine Learning" in *AI, Data and Private Law: Translating Theory into Practice* (Gary Chan Kok Yew & Man Yip eds) (Hart Publishing, 2021) at pp 199–224.

25 Crenguta Leaua & Iulia-Alexandra Didu, "Chatbots. Legal Challenges and the EU Legal Policy Approach" (2021) 10(3) *Perspectives of Law and Public Administration* 210 at 212.

26 Jerrold Soh, "Legal Disposition and Artificially-Intelligent Attributions" (2023) 43(4) *Legal Studies* 583 at 596.

is nevertheless to conceive of such non-deterministic algorithms as autonomous moral actors. After all, because of the way in which they operate, they give the impression of sentience. This, when coupled with our "dispositionist tendencies", that is, our tendency to attribute behaviour to moral decision-making rather than situational factors affecting behaviour, can lead us to conceive of "AI systems as autonomous beings" by anthropomorphising such programs.[27] This was the underlying premise of Air Canda's argument when it attempted to characterise the chatbot as a separate legal entity responsible for its own actions.

10 If one were in Mr Moffatt's shoes, it would be tempting to respond by conceding Air Canada's point and invoking the doctrine of vicarious liability. This argument, however, raises a host of thorny issues. For one, conceding the point must necessarily assume that such non-deterministic programs (or what we may call AI) can and should be conferred legal personality.[28] This is because, unless we conceive of AI as possessing legal personhood, the idea of harms caused by AI would challenge the theoretical structure of corrective justice underpinning the law of torts[29] (and private law more generally).[30]

11 Second, assuming that AI does have legal personality, several problems arise in determining the precise contours of AI liability. For one, it is not always clear where automation ends and autonomy begins, leading to considerable difficulty in determining where fault lies. This is because while the ultimate goals sought to be achieved by an AI program are prescribed by its programmer, due to the way such programs operate, the "reasoning" behind its output may be opaque, and its outcomes,

27 Jerrold Soh, "Legal Disposition and Artificially-Intelligent Attributions" (2023) 43(4) *Legal Studies* 583 at 598.

28 Simon Chesterman, "Artificial Intelligence and the Limits of Legal Personality" (2020) 69(4) *International and Comparative Law Quarterly 819*. *Cf* Claudio Novelli, Giorgio Bongiovanni & Giovanni Sartor, "A Conceptual Framework for Legal Personality and Its Application to AI" (2022) 13(2) Jurisprudence 194 and Jasper Doomen, "The Artificial Intelligence Entity as a Legal Person" (2023) 32)(3) *Information & Communications Technology Law* 277.

29 Pinchas Huberman, "Tort Law, Corrective Justice and the Problem of Autonomous-Machine-Caused Harm" (2021) 34(1) *Canadian Journal of Law and Jurisprudence* 105 at 121.

30 Ernest J Weinrib, *The Idea of Private Law* (Oxford University Press, 2012).

unexpected. [31] This has led some AI algorithms to be described as "black boxes" in that the complexity of their code obscures the analysis undertaken by the algorithm.[32] Such systems therefore do not lend themselves well to the application of mechanisms by which the law determines fault, such as the test of foreseeability.[33]

12 Further, even assuming that it is possible in every case to discern what decisions are attributable to the developer and what decisions may be solely attributable to the AI algorithm, a claimant seeking to prove vicarious liability faces a further evidential difficulty – the code which the claimant would need to analyse in order to make such a determination will in all likelihood be protected by intellectual property law,[34] and developers would be extremely reluctant to disclose the inner workings of such algorithms, thereby adding to the lack of transparency in the decision-making processes of such algorithms.

13 Even if these practical and doctrinal difficulties can be ironed out, as a matter of theory, additional difficulties arise from the uncomfortable fit between the impersonal nature of AI and the rationale for tortious duties of care. Liability for negligence arises out of the moral obligation of a person to "love [their] neighbour".[35] In other words, the duty of care in tort arises out of a relational proximity between individuals which imposes a moral obligation to consider how one's acts may reasonably

31 Pinchas Huberman, "Tort Law, Corrective Justice and the Problem of Autonomous-Machine-Caused Harm" (2021) 34(1) *Canadian Journal of Law and Jurisprudence* 105 at 111.

32 Dolores Morondo Taramundi, "Discrimination by Machine-Based Decisions: Inputs and Limits of Anti-Discrimination Law" in *Law and Artificial Intelligence* (Bart Custers & Eduard Fosch-Villaronga eds) (T.M.C Asser Press, 2022) at p 76.

33 Ryan Calo, "Robotics and the Lessons of Cyberlaw" (2015) *103 California Law Review* 513 at 542.

34 Dolores Morondo Taramundi, "Discrimination by Machine-Based Decisions: Inputs and Limits of Anti-Discrimination Law" in *Law and Artificial Intelligence* (Bart Custers & Eduard Fosch-Villaronga eds) (T.M.C Asser Press, 2022) at p 76.

35 *Donoghue v Stevenson* [1932] AC 562; [1932] All ER Rep 1 at 11. See also, Tan Seow Hon, *Justice as Friendship: A Theory of Law* (Ashgate, 2015).

affect others.[36] Even though the "acts" of AI do have the power to affect others, it is difficult to conceive of such acts as attracting a corresponding "duty" on the part of that AI, given that it is, at the end of the day, a mere collection of lines of code and cannot, therefore, owe moral obligations.[37]

14 Turning to matters of a more practical flavour, it bears emphasising that Mr Moffatt had bothered to capture and save a screenshot of what the Air Canada chatbot had told him – this meant that Air Canada could not dispute that their chatbot had provided inaccurate or misleading information.[38] The lack of such evidence might not necessarily torpedo one's case. If the chatbot in question was a deterministic system, it would be possible to simply revisit the site, input the query, and the program should return the exact same response, assuming that the pre-designated output containing the misleading information had not yet been corrected. Non-deterministic chatbots, however, pose a different problem in that they may not produce the exact same result each and every time. In such a case, assuming that the defendant does dispute what output the non-deterministic chatbot had produced, the court will have to make a finding as to what the chatbot's output in question actually was, taking into account, *inter alia*, other contemporaneous pieces of evidence (*ie*, correspondence between the parties).

15 One other difficulty concerns the use of expert witnesses. Modern civil procedure generally demands that leave be sought before expert evidence can be adduced.[39] The question then is

36 Pinchas Huberman, "Tort Law, Corrective Justice and the Problem of Autonomous-Machine-Caused Harm" (2021) 34(1) *Canadian Journal of Law and Jurisprudence* 105 at 114.

37 It may, however, be possible to instead mount a claim in negligence against the company that has deployed the chatbot, and argue that the company has a duty of care to ensure that the chatbot is properly deployed (*ie*, by providing the correct information).

38 In the digital age, evidential issues relating to electronic evidence are likely to arise more frequently. See *Electronic Evidence* (Stephen Mason & Daniel Seng eds) (Institute of Advanced Legal Studies, 4th Ed, 2017).

39 The County Court Rules 1981 (SI 1981 No 1687) (UK) Ord 20 r 27(1); Disputes Tribunal Rules 1989 (SR 1989/34) (NZ) cl 14(2); Singapore Rules of Court 2021 O 12. See, however, r 8.3.3 of the British Columbia Civil Resolution Tribunal: Standard Rules which does not require leave.

whether leave should be granted in such cases. On the one hand, expert evidence may be useful in helping the court grasp the nuts and bolts of such technology. Yet, on the other, it would have been costly, time-consuming and disproportionate, in a small claim, for the parties to procure expert witness testimony. Given the focus on cost-effective litigation, it is unlikely that leave to use expert evidence will be granted for small claims.

16 It may therefore be useful for judges hearing such claims to have a working knowledge of such technologies. On that front, there is, indeed, increasing focus on ensuring that judges are equipped with basic technical knowledge of emerging technologies which are entering use and likely to form the subject of disputes before the court.[40] To give one example, New Zealand has launched the Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals. Although these guidelines are meant to regulate the use of AI in adjudication rather than the application of technical knowledge of AI to the merits of a case, they do provide a basic working knowledge of AI.[41]

IV. Conclusion

17 Apart from usefully illustrating the sort of issues arising from the use of chatbots, *Moffatt* does reflect a growing trend: that cases being brought before the courts will, increasingly, require lawyers and judges alike to not only have a basic understanding of the technology used in this modern age, but also that the

40 See Albert H Yoon, "Technological Changes Facing the Judiciary" in *Legal Tech and the Future of Civil Justice* (David Freeman Engstrom ed) (Cambridge University Press, 2023) at pp 357–358.

41 Justice Goh Yihan, Supreme Court of Singapore, "Artificial Intelligence in Judicial Training and Education: Potential Use of Artificial Intelligence in Training and Education of Judges", speech at the Inaugural Singapore-India Conference On Technology (13 April 2024) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-goh-yihan--speech-at-the-inaugural-singapore-india-conference-on-technology> (accessed 28 April 2025), citing the Guidelines for Use of Generative AI in Courts and Tribunals (7 December 2023) at p 2. The guidelines emphasise the importance of having a basic understanding of the capabilities and limitations of generative AI chatbots, in particular, that they are not search engines but rather complex algorithms that generate text based on prompts they have received and data they have been trained on.

ability to recognise, and properly frame key issues remains critical. That much is also evident if we look at cases from our own local jurisprudence: to name a few, see *Quoine Pte Ltd v B2C2 Ltd*,[42] *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")*[43] and *Global Yellow Pages Ltd v Promedia Directories Pte Ltd*.[44]

18 In so far as liability for the output of chatbots is concerned, failing to properly characterise them as being either deterministic or non-deterministic as the starting point for legal analysis will, in all likelihood, result in a wild goose chase. In cases involving deterministic software, as the authors have sought to argue, it would be quite difficult to escape liability on the basis that one has no control over the output of the program. The case, however, is less clear in situations involving non-deterministic software, and the authors have sought, in this case comment, to scope out some of the legal and evidential issues that the lawyer operating in this space may have to deal with.

42 [2020] 2 SLR 20. This case concerned the application of the doctrine of unilateral mistake to a situation involving trades executed by an automated trading algorithm.

43 [2023] 3 SLR 1191. *CLM v CLN* [2022] 5 SLR 273; *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748.

44 [2017] 2 SLR 185. See also *RecordTV Pte Ltd v MediaCorp TV Singapore Pte Ltd* [2011] 1 SLR 830. For other cases, see *Super Group Ltd v Mysore Nagaraja Kartik* [2019] 4 SLR 692 (dealing with the application of s 116A of the Evidence Act (Cap 97, 1997 Rev Ed) to the authenticity of e-mail records).