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

JOY SOULAMWINI (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
• 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