

BRIEFING NOTE

No Safe Haven Abroad: Court of Appeal Adopts Robust Privacy Protections to AI Image Scraper

Introduction

In *Clearview AI Inc. v. British Columbia (Information and Privacy Commissioner)*, [2026 BCCA 67](#), the BC Court of Appeal confirmed that privacy obligations can extend beyond territorial borders and will apply where there is a real and substantial connection to the Province. In doing so, the decision provides a strong precedent for the governance of, and autonomy over British Columbia's biometric data and may prompt regulators to play a more assertive role in overseeing global technology companies.

Background

Clearview AI Inc. (“**Clearview**”) is a private US-based tech company that sells facial recognition software. Its search engine detects and scans human faces from publicly accessible websites (e.g., YouTube, Facebook, Instagram), and then produces a numeric biometric identifier based on the individual's unique facial features. When a Clearview client uploads an image of a person of interest to them, Clearview's algorithm provides them with any facial images that match the client's uploaded image, along with links to where the image was uploaded. Clearview primarily markets its services to law enforcement and other government agencies and has approximately 30 billion images and facial data of approximately three billion individuals.

The BC Information and Privacy Commissioner (“**Commissioner**”), along with the privacy commissioners of Alberta, Quebec, and Canada commenced a joint investigation into whether Clearview was violating privacy protection laws in their respective jurisdictions. In December 2021, the Commissioner issued a decision, finding Clearview had contravened ss. 6–8, 11, 14, and 17 of the *Personal Information Protection Act*, S.B.C. 2003, c. 73 (“**PIPA**”), and made orders prohibiting Clearview from offering some of its services to clients in BC; directed them to halt the collection, use and disclosure of images and biometric facial arrays collected from individuals in BC without their consent; and delete images and biometric facial arrays collected from individuals in BC without their consent.

Clearview applied to the BC Supreme Court for judicial review, arguing in part that *PIPA* could not apply to it as a matter of constitutional law. The judicial review was unsuccessful, and Clearview appealed to the Court of Appeal

The Appeal

The parties agreed that for the application of *PIPA* on Clearview to be constitutionally permissible, Clearview's activities must have a “sufficient” or “real and substantial”

Guild Yule LLP

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com

connection to BC. This is determined through a contextual inquiry into the relationship between the enacting jurisdiction, the subject matter of the law, and the person (or entity) sought to be regulated. The “context” in this instance is the internet as it exists today.

Clearview argued no such connection existed and gave several reasons for why this was the case. They noted there was no evidence that any of Clearview’s servers or other social media platforms from which Clearview’s image crawler mines facial data were located in BC. They further pointed out that Clearview stopped offering its services in BC in July 2020 and had not conducted business in BC (or Canada) since. They also argued that their product is entirely indifferent to location, such that its acquisition of facial data in BC is merely “incidental” to its operation.

The Court confidently rejected the argument about the server location, finding that while this may have been a notable factor in the past, the dramatic evolution of the internet has diminished the relevance of the territorial proximity of physical plants such as servers. The Court also rejected the argument that the acquisition of facial data in BC is merely “incidental” to its operation, finding that Clearview’s success as a business depends on its ability to acquire facial data on a global scale to build the data bank on which its search engine runs. Clearview’s argument that *PIPA* is constitutionally inapplicable to it means that it, and any other company that acquires personal information on the internet using a global search engine, would be immune from domestic privacy laws. The Court agreed with the Commissioner and the BCSC and determined that *PIPA* was constitutionally applicable to Clearview.

Significance

This is a significant decision for individuals and corporations with an online presence or offering online services accessible in BC. The Court made it clear that companies do not need a physical presence in BC to be regulated, nor do they need to be conducting business with individuals in BC. If their activities can affect people in the province, they can be regulated. The decision also reinforces the importance of privacy as a quasi-constitutional right and rejects the idea that anything online is free to use. Even if images are publicly accessible, collecting them at scale for facial recognition still requires consent. This should raise some flags with companies engaged in similar operations, such as those using content created and published by British Columbians to train artificial intelligence tools and models.

The BC Supreme Court will soon have an opportunity to apply this decision, as X Corp. (formerly Twitter) has applied for judicial review of a decision from the Civil Resolution Tribunal. The CRT imposed a \$100,000 penalty pursuant to the Intimate Images Protection Act for X’s failure to delete intimate images of a BC resident from their website (X had instead blocked access to users based in BC). X argued that the CRT only has the authority to regulate X within BC’s borders, and cannot compel X to restrict or eliminate what users in other parts of the world see.

Andrew Weir (articled student)
aweir@guildyule.com
 (604) 844-5558

Guild Yule^{LLP}

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com

If you are an individual or organization seeking advice or are involved in a dispute concerning artificial intelligence or data privacy, we invite you to contact us. Our full-service litigation firm has considerable experience in front of tribunals, commissions and courts.