



DISCLOSURE OBLIGATIONS IN CIVIL LITIGATION: Lessons From The “Wagatha Christie” Case Catherine Ramnarine

In civil litigation, each party has a duty to disclose to the Court and the other parties in the proceedings any documents in their control that are directly relevant to the matters in question in the proceedings. This duty extends not only to documents that the disclosing party intends to rely on, but also any documents that adversely affect their case or support the other party’s case. A litigant’s failure to comply with their disclosure obligations can have serious adverse consequences on their litigation prospects, as illustrated by the recent high profile UK case of [2022] EWHC 2017 (QB) *Vardy v Rooney*, more popularly referred to as the ‘Wagatha Christie’ case.

The parties in that case – Rebekah Vardy and Colleen Rooney – were both married to former England footballers and were referred to colloquially as ‘WAGS’, a slang term used to refer to the wives and girlfriends of sports stars and other celebrities.

On 9th October 2019, Rooney published a post on her Twitter, Facebook and public Instagram accounts. In that post she indicated that one of the followers of her personal (i.e. a separate, non-public) Instagram account had been leaking her private posts to the media. She explained that she had discovered who had been doing this by blocking all of her followers, save one, from viewing her private Instagram posts. This enabled her to test whether her posts would still be leaked to the media, which they were. She then revealed that the account that she had not blocked, i.e., the only account that would have been able to view the leaked posts, belonged to Vardy.

Rooney’s perceived ingenuity in solving the mystery of who had been leaking her private posts led to her being dubbed ‘Wagatha Christie’. However, Vardy strenuously denied being the leaker, and brought a claim against Rooney for defamation.

One of the issues that arose in the case was whether Vardy had used her agent, Caroline Watt, as a conduit to leak information posted by Rooney. In keeping with her duty to disclose any documents that were directly relevant to the proceedings, Vardy was required to disclose her Whats App exchanges with Watt. However, she failed to do so, claiming that these messages had been lost.

Vardy claimed that she had tried to provide copies of the messages to her attorneys using a file sharing platform, but that her computer and phone had crashed while she was attempting to upload the messages and that when she restarted them, the messages had all disappeared. An expert witness testified that it was impossible for the messages to have been lost in the way that Vardy described.

Additionally, the Court had also made an order requiring the inspection of Watt’s phone. However, Watt claimed to have accidentally dropped her phone into the ocean during a family boat trip, shortly after the Order was made.

The Judge did not accept the explanations provided by Vardy and Watt. She noted:

“In my judgment, even taking this evidence on its own, the likelihood that the loss Ms Watt describes was accidental is slim. The reasons that Ms Vardy and Ms Watt have given for the original WhatsApp chat being unavailable are each improbable. But the improbability of the losses occurring in the way they describe is heightened by the fact that it took the combination of these improbable events for the evidence to be unavailable...In my judgment, it is likely that Ms Vardy deliberately deleted her WhatsApp chat with Ms Watt, and that Ms Watt deliberately dropped her phone in the sea.”

Ultimately, the Judge did not find Vardy to be credible. She found that Vardy, with Watt, had indeed leaked Rooney’s private posts to the media. Vardy’s claim was dismissed.

Locally, the Trinidad and Tobago Courts have taken a similar approach to a party’s failure to disclose relevant documents. In CV 4502 of 2010 *Brathwaite v The Attorney General*, for example, the claimant alleged that he was assaulted and beaten by prison

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For decades, the rhetoric that automation will be the precursor to the downfall of humankind has been a central theme of dystopian cinema. As such, in December, 2022, the alarm bells of the belligerent anti-automation populace would have certainly rang, as ChatGPT, a prototype dialogue-based artificial intelligence ('AI') chatbot, capable of understanding natural human language and generating detailed responses, was released for public use and interaction. The news surrounding ChatGPT was closely followed by another AI chatbot, DoNotPay's "robo-lawyer" (the '**RoboLawyer**'), which is scheduled to provide real-time support in court hearing, with no human input. ChatGPT and RoboLawyer's recent attention has resurfaced areas of debate regarding the role of AI and robots in shaping our ever-evolving society, and whether (and indeed how), robots should be taxed.

Over the past century, automation and technological development have been the proponents of significant improvements in both the quality and continuation of human life. From the use of robots in hazardous and dangerous environments to reduce risk to human life, in medicine and in the military, to simple uses in lifting heavy loads and the completion of repetitive monotonous tasks with a consistency and efficiency impossible to be matched by humans, there is little room to argue against technology's role in exponentially changing the trajectory of human development in modern times.

AI however, is considered as being a step too far, due to the risk that it may ultimately replace humans. For the most part, AI's role has remained limited to the organisation and connection of data, and being highly task focused. However, ChatGPT has added an entirely new layer to AI's role, at least to the public, in offering solutions to problems requiring not only an extensive knowledge base, but critical analysis and problem solving. While lawyers have been using forms of automation in their legal services for a considerable period of time, RoboLawyer's potential use in a courtroom adds an even further practical application of AI to the real world. It purports to replace a human lawyer during a court hearing (albeit in a traffic-related matter), with the robot being the sole source of legal guidance before the judge.

ChatGPT and RoboLawyer are not the only AI systems that have been involved in ground-breaking developments, but rather, there are scores of achievements made by AI in recent times. For example, in late 2021, an AI system in South Africa has been listed as an inventor and granted a patent for designing and creating an invention of technology.

However, for all the hype around the unprecedented use of AI in a court hearing and its potential to change the provision of legal services, this does not mean that AI can necessarily and automatically replace professionals and lawyers. In fact, AI and machine learning still require considerable development before it can think, interpret, write and function like a human.

Before even reaching that stage, significant strides are required to ensure that the information generated is accurate. Indeed, users of both ChatGPT and RoboLawyer have reported numerous instances of incorrect information being provided in response to questions, ranging from inaccurate representations of the law, to wrong tax rates being provided.

Academia has also expressed concerns with the potential use of AI as it may encourage plagiarism and other dishonest practices by students, who may simply request answers from AI systems under the guise of being their own work.

While research and development departments tackle these issues with AI and automation, policymakers are tasked with determining how to confront the problem of robots replacing humans in the workforce. With respect to tax policies at least, which often shift and evolve to address societal and economic changes, policymakers are required to determine whether to slow this progression, or how to capitalize on it.

On the one hand, there is a concern that increased automation is likely to cause large scale unemployment, which can lead to a reduced personal income tax base, and ultimately less revenue generated for a country. While the true magnitude of a reduction in revenue may be unknown at this stage, the potential to destabilise the economic and social welfare within a country exists. Having regard to this risk, discussions surrounding taxing robots have arisen.

The rationale for taxing robots is that although humans and machines may perform the same role or task, tax laws apply differently to both. This however, creates the risk that companies engage in automation (while not necessarily improving efficiency) for the sole object of reducing expenditure on salaries, social security contributions (such as national insurance contributions) and the benefits necessary to retain a human workforce. Further, the use of tax policies aimed at robots is likely to perpetuate scepticism and general distrust of robots, by maintaining an artificial separation between the two, rather than a recognition that robots are to add value and support humankind.

In any event, if robots were to be taxed, what the most appropriate measure to effect the tax is, remains unknown. As indicated above, one of the main proponents for taxing robots is the reduced tax base by the replacement of humans with robots. The first hurdle to surmount is that robots have no legal capacity; as such, any likely tax would be on the use of robots. Practically, this means that the entity utilising robots will be doubly taxed; first on its corporation tax, and second, by way of the robot use tax. From an international tax perspective, the introduction of a robot tax, in the absence of an international consensus, is likely to reduce competitiveness for that jurisdiction's residents, and to attract foreign investment.

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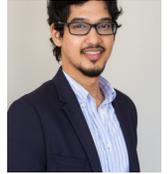
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officers. One of the prison officers claimed in the witness box that the claimant had actually assaulted him, and that he had reported this to his supervisor at the time. However, the defendant had not disclosed a copy of that report during the proceedings. The Judge noted that where a party failed to disclose documents it was open to the Court to draw adverse inferences at the trial in relation to the absence of those documents. In that case, the Judge concluded that the report likely contained information that would have been detrimental to the defendant’s case. He ultimately found in favour of the claimant.

The above cases illustrate the importance of complying with disclosure obligations in civil litigation. A party to litigation cannot hold back documents, even if they perceive them to be damaging to their case. While specific exceptions exist, such as legal privilege, it is important for litigants to discuss their disclosure obligations with their attorneys and to obtain proper legal advice. It is also important for parties to pro-actively take steps to preserve any relevant documents – including electronic documents or less formal communications such as those sent using social media and messaging platforms – as soon as litigation is contemplated, and to be thoughtful about any documents that they create during the course of litigation.

There can be significant sanctions and adverse consequences for parties who fail to comply with their disclosure obligations.

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The second hurdle is that a robot tax is likely to disincentivize further research and development of robotics and AI for use in areas that add value to humans, which would have damaging effects on certain critical areas such as medicine, engineering and the military.

Third, although automation may have been responsible for increased levels of employment in the past, this has historically been in the short term. In the long term, productivity has increased, and innovative service areas and lines have arisen.

Ironically, tax administrations across the world have been using AI in their systems for tax compliance for a considerable amount of time, whether through filing returns electronically, or using systems to input and receive information and records. If a robot tax was to be imposed, a potential middle ground may be that the revenue gained from such a tax be directly invested to fund programmes for unemployed persons and to retrain them for different roles that have not been rendered redundant by robots and AI.

For all the benefits that robotics and AI can provide however, it would still be unwise to wholeheartedly trust automated systems that continue to require improvement, as, inherent in improvement, is the recognition that what previously existed, was some semblance of imperfection.

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