

No. Court File No. **VLC-S-S-255295**

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN



Plaintiff

AND

**AMAZON.COM, INC., AMAZON.COM SERVICES LLC,
AMAZON.COM.CA ULC**

Defendants

Brought under the *Class Action Proceedings Act*, [R.S.B.C. 1996], c. 50**NOTICE OF CIVIL CLAIM****This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
 - b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
 - c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
 - d) if the time for response to civil claim has been set by order of the court, within that time.
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CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. Amazon is the supplier of “Alexa”, a smart home product, which allows an individual to control their TV and other ‘smart home appliances’ by simply speaking aloud to Alexa-enabled devices.
2. In its terms of service Amazon made explicit commitments to Alexa users regarding their privacy. However, rather than protecting users privacy, Amazon: (1) kept the data it took from Alexa indefinitely; (2) used that data to train its algorithms, machine learning programs and AI; and (3) failed to fully delete the data when customers asked it to.
3. This claim seeks to vindicate the rights of class members to privacy as well as their rights under the various provincial consumer protection acts.

The Plaintiff

4. The plaintiff, [REDACTED] (hereinafter the plaintiff or [REDACTED]”), is a resident of [REDACTED]. Over time, he purchased several Alexa-enabled products, including smart speakers, Ring Cameras and TVs.

5. [REDACTED] set up Alexa to control many things around his house. For example, Alexa would use GPS to detect when he left the house, automatically turning off lights and other electronic devices. Entertainment and security were also integrated into the setup, and [REDACTED] streamed content from platforms like YouTube Music, Spotify, CBC, and Global TV, using Alexa. He would also monitor his home through Ring cameras connected to the Alexa system.

The Defendants

Amazon

6. The defendant Amazon.com, Inc., is a Delaware corporation with its principal place of business in Seattle, Washington.
7. The defendant Amazon.com Services LLC is a Delaware limited liability corporation with its principal place of business in Seattle, Washington. Amazon.com, Inc. and Amazon.com Services LLC are referred to collectively herein as (“**Amazon US**”)
8. The defendant, Amazon.com.ca ULC (“**Amazon Canada**”) is a British Columbia Corporation with its corporate headquarters in Toronto, Canada. This is the entity through which Amazon offers its Alexa products across Canada. Hereinafter, all three defendants are collectively referred to as “**Amazon**”.
9. Since 2014, Amazon has developed, manufactured, and sold Internet-connected speakers, branded as Amazon “Echo” devices, controlled by Amazon’s proprietary cloud-based voice assistant service, Alexa.
10. Amazon’s Alexa-powered Echo devices listen for and respond to users’ oral requests.
11. Amazon offers its services in Canada through Amazon Canada and the Amazon.ca website.

CLASS DEFINITION

12. The proposed class action is brought on behalf all residents of Canada with an Alexa user account on or before July 19, 2023.

FACTS

Alexa: Amazon's Voice Assistant Service

13. Since 2014, Amazon has developed, manufactured, and sold Internet-connected speakers, branded as Amazon "Echo" devices, controlled by Amazon's proprietary cloud-based voice assistant service, Alexa. Other products, such as televisions, have been equipped and sold with Alexa capabilities (collectively "**Alexa-enabled Devices**"). Alexa is a voice-activated, cloud-based service that can access online resources to respond to inquiries and execute commands.
14. To use Alexa, an individual must register with the Alexa App and then pair their account on the App with an Alexa-enabled Device. There are over 60,000 Alexa enabled devices on the market and over 100 million of them have been sold worldwide.

How Alexa Works

15. The microphone in an Alexa-enabled Device is always on but not always recording. When the microphone in an Alexa-enabled device picks up a "wake" word (typically, "Alexa"), the device begins to stream audio to Amazon's cloud servers.
16. In order to ensure that Alexa is responsive, the microphones in Alexa-enabled Devices are set to be able to record conversation anywhere in a room and often in nearby rooms. Similarly, Alexa is set to 'wake' when it hears sounds similar to its wake word. This has lead to a phenomenon where users find that Alexa has recorded sections of their conversations even when they did not intend to interact with Alexa.
17. In either case – whether it has been woken on purpose or by accident – once Alexa begins streaming audio to the cloud, that audio is transcribed to text, which is processed by an algorithm that instructs the Alexa system how to respond to the user. Once the request has been processed and responded to (or dismissed as a false wake), a copy of (1) the audio file, (2) the transcription, (3) the resulting instructions to Alexa, and (4) any associated metadata is stored in an Amazon database.

18. Prior to 2020, there was no way for users to have the data associated with their interactions with Alexa deleted and it was stored indefinitely. In 2020, Amazon introduced a feature which purported to allow users to have the data associated with their Alexa interactions deleted. However, until on or about July 19, 2023, Amazon merely deleted the audio file from its records, but kept the transcription, instructions and associated meta data.
19. Finally, users can choose to install what Amazon calls “skills” on their Alexa devices. These are functions created by third-parties which allow Alexa to do more things for the user (such as tell the weather or control a thermostat). These increase the number of situations in which a user would interact with Alexa.
20. When a user chose to delete the data on one or more of their interactions with Alexa, Amazon changed what was visible to the user so that it appeared that the interactions had been completely deleted even though Amazon was actually retaining everything except the audio file.

Amazon’s use of the Alexa Data

21. By keeping the voice recordings, transcripts and associated meta data, Amazon amassed a huge database of valuable information, both in the form of voice recordings (which can be used to train algorithms, A.I.s and machine learning systems on natural language), as well as the transcripts of requests and conversations (again useful for training algorithms, A.I.s and machine learning systems) and associated metadata.
22. Amazon profited from this data to train its own algorithms and machine learning systems. Amazon also profited from the data by using it, along with the associated metadata, to create profiles for users which it could use to target advertising at them more effectively.

Amazon Alexa Terms of Use

23. Amazon has a set of “Terms of Use” for Alexa, which varied throughout the class period. The Terms of Use apply to all individuals with Alexa user accounts and users must agree to them to create accounts and use Alexa.

24. At all material times, the Amazon Terms of Use incorporated the “Amazon.ca Privacy Notice”.
25. Amazon consistently represented to users throughout the class period that it designed “all of our systems and devices with your privacy in mind.”

Statements Regarding Collection of the Alexa Data

26. In 2021, Amazon told its users in the Privacy Notice that it collected the following types of personal information:
- **Information You Give Us:** We receive and store any information you provide in relation to Amazon Services. Click here to see examples of what we collect. You can choose not to provide certain information, but then you might not be able to take advantage of many of our Amazon Services.
 - **Automatic Information:** We automatically collect and store certain types of information about your use of Amazon Services, including information about your interaction with content and services available through Amazon Services. Like many websites, we use "cookies" and other unique identifiers, and we obtain certain types of information when your web browser or device accesses Amazon Services and other content served by or on behalf of Amazon on other websites. Click here to see examples of what we collect.
 - **Information from Other Sources:** We might receive information about you from other sources, such as updated delivery and address information from our carriers, which we use to correct our records and deliver your next purchase more easily. Click here to see additional examples of the information we receive.
27. If the user followed the internal “Click here” link, he or she would be taken to a page that supplied a number of examples of data collection, which included “voice recordings when you speak to Alexa.”
28. Similarly, by following another link in the Privacy Notice, users would be taken to a page called “Alexa, Echo Devices, and your Privacy”. That page explained that “When you speak to Alexa, a recording of what you asked Alexa is sent to Amazon’s cloud where we process your request and other information to respond to you.” It went on to say that “Echo devices are designed to detect only your chosen wake word (Alexa, Amazon, Computer or Echo). The device detects the wake word by identifying acoustic patterns that match the wake word. No audio is stored or sent to the cloud unless the device detects the wake word.”

29. Other privacy notices throughout the period were materially the same.

Statements Regarding Use of the Alexa Data

30. Amazon Canada's privacy notice in 2021 promised users that:

We use your personal information to operate, provide, develop, and improve the products and services that we offer our customers. These purposes include:

- **Purchase and delivery of products and services.** We use your personal information to take and handle orders, deliver products and services, process payments, and communicate with you about orders, products and services, and promotional offers.
- **Provide, troubleshoot, and improve Amazon Services.** We use your personal information to provide functionality, analyze performance, fix errors, and improve the usability and effectiveness of the Amazon Services.
- **Recommendations and personalization.** We use your personal information to recommend features, products, and services that might be of interest to you, identify your preferences, and personalize your experience with Amazon Services.
- **Provide voice, image and camera services.** When you use our voice, image and camera services, we use your voice input, images, videos, and other personal information to respond to your requests, provide the requested service to you, and improve our services. For more information about Alexa voice services, [click here](#).
- ...
- **Advertising.** We use your personal information to display interest-based ads for features, products, and services that might be of interest to you. We do not use information that personally identifies you to display interest-based ads. To learn more, please read our Interest-Based Ads notice.
- ...

31. If the user followed the link about Alexa voice services, they would be led to the “Alexa, Echo Devices, and Your Privacy” page which told them that “we use your requests to Alexa to train our speech recognition and natural language understanding systems using machine learning. Training Alexa with real world requests from a diverse range of customers is necessary for Alexa to respond properly to the variation in our customers’ speech patterns, dialects, accents, and vocabulary and the acoustic environments where customers use Alexa.”

32. Amazon's disclosure throughout the class period was materially similar.

Statements Regarding Deletions

33. Amazon's privacy notice in 2021 also promised that "to the extent required by applicable law, you may have the right to request access to or delete your personal information. If you wish to do any of these things, please contact Customer Service." There was no specific reference in the privacy notice to Alexa's voice recordings or other data.
34. Throughout the Class period, Amazon's Terms of Service and Privacy Notice did not explain to users how to delete their Alexa information.
35. Amazon's current privacy notice *now* tells users that, "When you consent to our processing your personal information for a specified purpose, you may withdraw your consent at any time and we will stop any further processing of your data for that purpose." And that "to the extent required by applicable law, you have the right to request access to, correct, and delete your personal data."
36. Amazon Canada's *current* terms of service for Alexa refer to an "Alexa and Alexa Device FAQs" page, which promises Alexa users that:

You can review Alexa voice recordings associated with your Amazon account and delete those voice recordings one by one, by date range, by Alexa-enabled device, by attributed Voice ID, or all at once by visiting Settings > Alexa Privacy in the Alexa app and Echo Show devices or <https://www.amazon.ca/alexaprivacysettings>. From either page, you can also choose to have your Alexa voice recordings older than 3 or 18 months deleted automatically, or you can choose to not save any voice recordings. If you choose not to save any Alexa voice recordings, we will automatically delete your voice recordings after we process your requests and automatically delete all of the voice recordings currently in your Voice History as well. And you can delete all those voice recordings associated with your account all at once for each of your Alexa-enabled devices and apps by visiting Manage Your Content and Devices.

You can also enable the ability to delete your recordings by voice at Settings > Alexa Privacy > Manage Your Alexa Data in the Alexa app and Echo Show devices or <https://www.amazon.ca/alexaprivacysettings>. When enabled, anyone with access to your Alexa-enabled devices can ask Alexa to delete voice recordings associated with your account. Deletion by voice is automatically enabled if any member of your household has created an Alexa voice ID and their voice is recognized when requesting to delete recordings by voice. You can delete the voice recording of your last request by saying "Alexa, delete what I just said." In addition, with a voice ID, you can say "Alexa, update my privacy settings" or "Alexa, auto-delete my voice recordings" to have your voice recordings older than 3 or 18 months deleted automatically, or to have them not saved at all.

37. The FAQ document goes on to tell users that “When you delete Alexa voice recordings associated with your account from Voice History, we will delete the voice recordings that you selected and the text transcripts of those recordings from Amazon's cloud. If you choose not to have any Alexa voice recordings saved, the text transcripts of your requests will be retained for 30 days, after which they will be automatically deleted.”
38. The FAQ document still does not reveal Amazon’s collection of metadata or a mechanism to delete metadata.

The Federal Trade Commission Complaint

39. In May 2023, the United States Federal Trade Commission (“FTC”) brought a complaint against Amazon alleging that Amazon falsely represented that users of the Alexa app could delete their voice recordings, transcripts and associated metadata, but instead, when requested to delete Alexa data, Amazon merely deleted the voice recordings, keeping the transcripts and associated metadata.
40. On July 19, 2023, Amazon and the FTC entered into a Stipulated Order for a Permanent Injunction, in which Amazon agreed to pay a \$25 million dollar fine and effectively admitted to a number of instances of unlawful data misuse by agreeing to several conditions:
- a) Amazon could not misrepresent the extent to which it retains, limits, or permits access to, or deletes any Alexa App Geolocation Information or Voice Information;
 - b) Amazon could not misrepresent the extent to which a consumer could exercise control over the retention, deletion or access to the Alexa App Geolocation Information or Voice Information;
 - c) Amazon could not misrepresent the extent to which a parent could exercise control over Amazon’s retention or deletion of children’s voice information and the steps a parent would have to take to implement those controls.

41. In the same order, Amazon finally agreed to delete all Alexa App Geolocation and Voice Information collected from United States consumers where the consumer had previously requested that it be deleted, including children's information.

42. Amazon agreed that it would not subsequently use the information to develop its products.

43. Amazon also agreed to extensive privacy programs and notices.

PART 2 – RELIEF SOUGHT

44. The plaintiff on his own behalf and on behalf of the class members, claim:

- a) an order pursuant to the *Class Proceedings Act [RSBC 1996] Chapter 333* (the “CPA”), certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff of the Class;
- b) a declaration that Amazon breached its contracts with class members;
- c) a declaration that Amazon breached the confidence of the class members;
- d) a declaration that Amazon intruded upon the seclusion of the class members;
- e) a declaration that Amazon breached the *Privacy Act*, R.S.B.C. 1996 c. 373; *The Privacy Act*, CCSM, c. P125, *The Privacy Act*, RSS 1978, c. P-24, and *The Privacy Act*, RSNL 1990, c. P-22;
- f) a declaration that Amazon breached the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and equivalent provincial legislation.
- g) General damages, moral damages, compensatory, pecuniary or special damages for violations of privacy.
- h) Damages and/or disgorgement of profits for violations of consumer protection legislation.

- i) Compensatory damages for breach of contract or nominal damages and/or disgorgement of profits.
- j) an order directing an aggregate assessment of damages pursuant to s. 29 of the *Class Proceedings Act*;
- k) an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
- l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996 c. 79;
- m) the costs of administering the plan of distribution of the recovery in this action; and
- n) such further and other relief as this Honorable Court deems just.

PART 3 – LEGAL BASIS - CAUSES OF ACTION

PIPEDA

- 45. The voice recordings, transcripts and associated metadata captured by Alexa were “personal information” as defined in section 2(1) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, (“*PIPEDA*”).
- 46. Amazon is an “organization” as defined in section 2(1) of *PIPEDA* and was required by section 5(1) to comply with *PIPEDA*’s mandatory obligations which are set out in Schedule 1 to *PIPEDA*.
- 47. Through its actions set out above, Amazon breached sections 4.2 (Identifying Purposes), 4.3 (Consent), 4.4 (Limiting Collection) and 4.5 (Limiting Use, Disclosure and Retention) of Schedule 1 to *PIPEDA*.
- 48. *PIPEDA* is mandatory, quasi-constitutional legislation. Amazon could not contract out of its requirements through one-sided contracts of adhesion.
- 49. *PIPEDA* informs the causes of action set out below.

Breach of Contract

50. In order to use Alexa, class members each entered into contracts under which Amazon Canada agreed to provide Alexa services in exchange for users agreeing to the terms of service (and ultimately, purchasing one or more Alexa-enabled products). The Amazon.ca Privacy Notice, as it existed during the class period, formed part of the contract. Amazon Canada's Alexa contracts were "take it or leave it" contracts where customers had no opportunity to negotiate the terms. They were therefore contracts of adhesion, subject to principles of interpretation governing such contracts.

51. The contracts were similar or identical in nature with respect to the terms for the collection, retention, and disclosure of the personal information of class members. The contracts contained the following express terms:

a) *Data Collection:*

- i. That Amazon Canada would limit collection of data to intentional interactions with Alexa: "“When you speak to Alexa, a recording of what you asked Alexa is sent to Amazon’s cloud where we process your request and other information to respond to you.” And “Echo devices are designed to detect only your chosen wake word (Alexa, Amazon, Computer or Echo). The device detects the wake word by identifying acoustic patterns that match the wake word. No audio is stored or sent to the cloud unless the device detects the wake word.”;

b) *Data Use*

- i. That the use of the data would be limited to allowing Alexa to “respond to your requests, provide the requested service to you, and improve our services.”; and that
- ii. Personally identifying information would not be used to profile and target ads at individuals “We do not use information that personally identifies you to display interest-based ads.”;

c) *Data Retention:*

- i. That users could delete their data; “you may have the right ... delete your personal information”

52. The contracts also contained the following implied terms:

a) *Data Collection:*

- i. That Amazon Canada would limit collection of data to instances of user direct interaction with Alexa;
- ii. That the data collected would be used only for the purposes of providing services through Alexa and would not be retained indefinitely; and
- iii. That the data collection would be limited to voice interactions with Alexa, and not include transcripts and associated meta data

b) *Data Retention*

- i. That users could effectively delete their data on Alexa; and
- ii. Once Amazon Canada introduced a method for users to delete their data in the Alexa App, that users who used the App to delete their data were actually able to delete their data.

c) *Data Use:*

- i. That the data collected would be used only for the purposes of providing services through Alexa and would not be used to train Amazon’s algorithms, A.I.s and machine learning software.

53. Amazon Canada breached the *data collection* promises in its contracts by:

- a) collecting data from false wakes;
- b) creating transcripts from the voice recordings and collecting those;

- c) collecting the associated metadata from Alexa interactions; and
- d) keeping the data indefinitely.

54. Amazon Canada breached its *data retention* promises in its contracts by:

- a) Misrepresenting to users that it was deleting all data from an interaction when in fact, only the voice recordings were deleted (2019 – 2023).

55. Amazon Canada breached its *data use* promises in its contracts by:

- a) Using the data to train its software, including algorithms, A.I.s and machine learning software; and
- b) Using the Alexa data, which was data about an identifiable person, to profile users and target advertising to them.

Meaningful Consent under PIPEDA

56. The collection and usage of class member personal information is governed by PIPEDA.

PIPEDA is mandatory legislation, pursuant to s. 5 of PIPEDA, and its provisions, which are found in Schedule 1 to PIPEDA, apply to the collection and use of information by Amazon and Amazon Canada.

57. In the alternative to the breaches of contract pleaded above, the plaintiff pleads that, to the extent that any of Amazon Canada's contractual terms purport to: (a) authorize the collection and indefinite retention of data from Alexa users; (b) authorize the use of Alexa user's voice recordings, transcripts and associated metadata to train Amazon's algorithms, A.I.s, and machine learning software; or (c) authorize Amazon to keep the transcripts and associated metadata when purporting to 'delete' users' interactions with Alexa, Amazon Canada failed to obtain explicit consent or meaningful consent under Schedule 1, Principle 3 of PIPEDA.

58. By failing to obtain explicit or meaningful consent under PIPEDA, Amazon Canada breached the contracts.

Data Collection and Retention

59. To the extent that Amazon Canada relies on the passage quoted at paragraphs 26 to 29 and 33 to 35 above as user consent to its collection and retention practices, the passages are too vague to the point of being meaningless.
60. Amazon Canada failed to comply with principles 4.3, 4.3.2 and 4.3.5 of *PIPEDA* by failing to communicate/explain adequately the full breadth of actual information which might be collected and therefore could not obtain consent under its contracts to the collection.
61. In order to make consent meaningful, an individual must be able to understand reasonably how the information will be used or disclosed. Amazon Canada's notifications about the information it collected through Alexa did not provide sufficient detail to form the basis for meaningful consent to (a) Amazon's collection of the voice recordings, transcripts and associated metadata; (b) Amazon's permanent retention of the voice recordings, transcripts and associated metadata (2014 – 2019); and (c) Amazon's default permanent retention of the voice recordings, transcripts and associated metadata (2019-2023). The notifications provided only higher-level explanations and limited examples of information to be used, which provided insufficient guidance for users to understand what they were agreeing to.
62. The use of terms such as "any information" and "certain types of information" are so broad that they provide no useful context to users reading them. Similarly, the statement that "a recording of what you asked Alexa is sent to Amazon's cloud where we process your request and other information to respond to you" does not inform users that the recording is saved, a transcript is made of it, and that the 'other information' includes significant amounts of metadata about the transaction. The lengthy terms of service and privacy notice, as well as the forest of 'links' between them and various other documents (such as the FAQ) were designed to overwhelm customers with information and options so that the average reader could not comprehend or provide meaningful consent to what rights Amazon Canada was claiming.
63. As a result, Amazon Canada breached its contracts when it collected the data from Alexa interactions.

64. Amazon Canada also failed to comply with principles 4.5 and 4.5.3 of *PIPEDA* by failing to destroy the personal information it collected when it was no longer required to fulfill the identified purposes for which it was collected. Principle 4.5 requires that:

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

65. Principle 4.5.3 requires that:

Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

66. Amazon Canada's stated purpose for the collection of the information was collected "to respond" to user requests. Amazon's privacy notice told users "to the extent required by applicable law, you may have the right to ... delete your personal information." The effect of these statements was to import the obligation in *PIPEDA* to delete the information once it was no longer required to respond to the user request. By retaining the information indefinitely (2014-2019); by retaining the information indefinitely by default (2019-2023) and by retaining the transcripts and associated metadata after purporting to 'delete' user interactions with Alexa (2019-2023), Amazon Canada breached that contractual obligation.
67. In the further alternative, the language in Amazon Canada's contracts did not articulate a purpose that justified indefinite retention and the fact of the retention was not sufficiently disclosed to obtain meaningful consent. Amazon Canada breached principle 4.3.6 of the *PIPEDA* by failing to obtain express consent from class members to the retention of user data. Without proper express consent under *PIPEDA*, retention was a breach of the contract. From 2019 to 2023, Amazon Canada breached principle 4.3.8 of the *PIPEDA*, which provides that an individual may withdraw consent to the collection, use and disclosure of personal information at any time when it failed to ensure that class members who instructed Amazon to delete their Alexa user information had their information effectively deleted

68. As a result, Amazon Canada breached its contracts when it retained user data indefinitely throughout the class period.

Data Use

69. To the extent that Amazon Canada relies on the passage quoted at paragraphs 30 to 32 in the fact section as user consent to its use of the data, the passages are too vague to the point of being meaningless.
70. Amazon Canada failed to comply with principles 4.3, 4.3.2 and 4.3.5 of PIPEDA by failing to communicate/explain adequately the full breadth of actual purposes for which the information would be used and therefore could not obtain consent under its contracts to the use of the information for those purposes.
71. In order to make consent meaningful, an individual must be able to understand reasonably how the information will be used or disclosed. Amazon Canada's notifications about how it would use the data it collected through Alexa did not provide sufficient detail to form the basis for meaningful consent. The notifications provided only higher-level explanations and limited examples of information to be used, which provided insufficient guidance for users to understand what they were agreeing to.
72. Amazon Canada disclosed that it used the user data to "provide functionality, analyze performance, fix errors, and improve the usability and effectiveness of the Amazon Services." This did not inform users that their personal information was being combined with other users' personal information to train Amazon's algorithms, A.I.s, and machine learning software. Even the disclosure in the "Alexa, Echo Devices, and Your Privacy" page that "we use your requests to Alexa to train our speech recognition and natural language understanding systems using machine learning" was insufficiently clear to inform users that their personal conversations were becoming part of a permanent set of training data that Amazon used across its systems.

73. As a result, Amazon Canada breached its contracts when it used the data it obtained from Alexa to train its algorithms, A.I. software and machine learning software throughout the class period (or allowed Amazon US to do so).

Damages for Breach of Contract

74. As a consequence of Amazon Canada's breach of the contracts the class claim nominal damages for breach of contract or disgorgement of all profits obtained by Amazon through its collection, use and retention of the data, which allowed Amazon to grow their business and revenues by improving its software products and via targeted advertisements directed to class members.
75. The plaintiff states that compensatory remedies alone are inadequate to address the harm occasioned on the plaintiff and the Class by Amazon Canada's breach of contract. The nature of the plaintiff's and the Class Members' interest in their personal information support their legitimate interest in preventing Amazon's profit-making activity and, hence, in depriving Amazon of its profits. Amazon should be required to disgorge its financial gains realized from the breach of contract, and its breach of its duties of honesty and good faith contractual performance.

Breach of the Duty of Honesty, Good Faith and Fair Dealing

76. The plaintiff pleads that Amazon Canada breached its contracts with class members when it knowingly deceived class members about its collection, use and retention of the data taken from Alexa by representing that it respected users privacy and that their data would be used only for responding to their requests to Alexa, when in fact, it was collecting undisclosed amounts of data, retaining that data indefinitely and using it to train algorithms, A.I.s and machine learning software.
77. This breach was a dishonest performance of its obligations under the contract (not to collect, retain or use the information beyond the limited purposes disclosed) and contrary to the spirit and intent of the contract, which was to protect individual's privacy while using Alexa. This

breach grounds a claim for breach of contract through breach of the duty of honest performance.

78. The same conduct was a breach of the duty of the common law organizing principle of good faith which is implied in all contracts. The breach of the duty consists of Amazon Canada's failure to be honest with class members about how it was collecting, retaining and using their personal information under the contract. The effect of this failure was to nullify one of the central purposes of the contract; the protection of class members' privacy
79. The majority of class members would never have signed up for Alexa if they knew: (a) the extent of the information it would collect on them; (b) that Amazon would retain that information indefinitely; and (c) that Amazon would use that information for its own purposes. Had they learned about this after signing up for Alexa, users would have discontinued their accounts.
80. Amazon and Amazon Canada knew that unless it assured users that their interactions with Alexa (and the false wake interactions) were not being kept indefinitely and exploited, its customer base would not have expanded. Amazon and Amazon Canada also knew that it did not need to keep the data indefinitely or exploit it. Both of these are demonstrated by the fact that, as these facts became more widely known, Amazon and Amazon Canada introduced more robust disclosure and the ability for users to opt out of the permanent collection of their data.

BREACH OF CONFIDENCE

81. Class members were invited to supply a limited set of data to Amazon to be used to provide them with services from Alexa. Instead, and contrary to its stated commitments in the privacy notice and contrary to applicable legislation and industry standards, Amazon deliberately collected broad swathes of data, kept it indefinitely, misled users about what they could delete

and then used it for their own benefit to train their algorithms, A.I.s and machine learning software.

82. The information and data of class members, was provided to Amazon in circumstances in which an obligation of confidence arose and in which the plaintiff and class members could have reasonably expected that their information would be kept confidential. .
83. Class members were objectively and materially misled by Amazon's commitment to privacy, as expressed in the privacy notice and as mandated by legislation and industry standards. Class members objectively and reasonably expected that their personal information and data would (a) not be collected, (b) if collected, would not be retained indefinitely, (c) would be deleted if they requested it, and (d) would not be used by Amazon for its own purposes.
84. Instead, Amazon Canada used the information in a way that was not authorized or intended by the class members who disclosed it. Class members' information was intentionally misused by Amazon when it (a) collected more than it disclosed it would, (b) retained that information indefinitely (even sometimes after purporting to delete it) and (c) exploited the information all to the detriment of the class members and constituted the tort of breach of confidence.
85. Amazon and Amazon Canada's unauthorized misuse of class member information is informed by and amounted to unauthorized use in contravention of PIPEDA, as further outlined above at paragraphs 60 to 73.
86. Class members suffered a detriment when their information, which they thought was private, was appropriated by Amazon and saved indefinitely to be used for Amazon's benefit.
87. As a consequence of Amazon's breach of confidence, class members are entitled to damages.
88. In the alternative, compensatory remedies alone are inadequate to address the harm occasioned on class members by Amazon's breach of confidence. The nature of class members' interest in their personal information and data support their legitimate interest in preventing Amazon's profit-making activity and in depriving Amazon of its profits. Amazon should be required to disgorge the financial gains it realized from the breach of confidence.

INTRUSION UPON SECLUSION

89. Amazon intruded upon the seclusion of class members ordinarily resident in the provinces of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan, and the territories of Yukon, Nunavut and the Northwest Territories by:

Data Collection

- a) intentionally and/or recklessly collecting their personal information without their express consent contrary to the express and/or implied terms of the terms of use and privacy notice and applicable privacy law, as pleaded above.

Data Retention

- b) intentionally and/or recklessly retaining the personal data of users without their express consent both in contravention of its obligations under the terms of use and privacy notice and applicable privacy law;
- c) intentionally and/or recklessly retaining the personal data of users who requested to have their data deleted while representing to them that their data *had been* deleted (2019-2023); and

Data Use

- d) intentionally and/or recklessly using the personal data of users to train Amazon's algorithms, A.I.s, and machine learning software.

90. As set out above at paragraphs 60 to 73, Amazon breached PIPEDA and equivalent provincial privacy legislation by its collection, retention and use of the Alexa user data.

91. Amazon's unauthorized collection, retention and use of the plaintiff's and other class members' personal information, and data was intentional or so reckless to amount to intentional conduct and, without lawful justification, invaded the private affairs and concerns of class members.

92. The information and data of class members that was disclosed by Amazon to its employees and used for Amazon's own purposes was – either independently or in the aggregate – inherently revealing and private, and a reasonable person would regard this invasion as highly offensive causing distress, humiliation, or anguish. Amazon's actions were highly offensive and demonstrate immense disregard for class members stated wishes regarding their personal information and rights to privacy because:

- a) the data included audio recordings of individuals in a private and personal setting;
- b) the data was collected in many cases without individuals being aware of it;
- c) the data was retained indefinitely, contrary to Amazon's disclosure to users;
- d) of the failure to remove and delete class members' information, despite telling class members that it was possible (2019-2023);
- e) the failure to obtain consent to use for Amazon's profit of class members' highly sensitive personal information, despite holding themselves out as otherwise protecting this information; and
- f) the failure to provide notice to class members in any manner, let alone the thorough, candid, and comprehensive manner required in order to advise them that their personal information was being retained indefinitely and made available to employees.

93. Amazon is liable for the tort of intrusion upon seclusion *vis-à-vis* class members.

94. Class members are entitled to damages which are actionable *per se*.

Statutory Torts for Breach of Privacy

95. The plaintiff pleads the following statutory claims on behalf of the class members who are domiciled in, or are residents of the Provinces of British Columbia, Manitoba, Saskatchewan, and Newfoundland and Labrador. Additionally, class members plead that the violation of privacy applicable to Amazon's actions are informed by the *Personal Information Protection*

and Electronic Documents Act, SC 2000, c. 5 (“PIPEDA”) and equivalent provincial privacy legislation and rely on the provisions therein.

96. Amazon substantially, unreasonably, willfully, and without claim of right violated the privacy of class members. More specifically, the plaintiffs plead that Amazon’s conduct constituted a breach of privacy for the following reasons:

Data Collection

- a) Amazon breached the privacy of class members by collecting their personal information without their express consent contrary to the express and/or implied terms of the terms of use and privacy notice and applicable privacy law;

Data Retention

- b) Amazon breached the privacy of class members by retaining the personal data of users without their express consent both in contravention of its obligations under the terms of use and privacy notice and applicable privacy law; and
- c) by retaining the personal data of users who requested to have their data deleted while representing to them that their data *had been* deleted (2019-2023);

Data Use

- d) Amazon breached the privacy of class members by using the personal data of users to train Amazon’s algorithms, A.I.s, and machine learning software in contravention of its obligations under the terms of use and privacy notice and applicable privacy law.

97. Amazon’s acts, outlined above, were done willfully in the course of its business, and without a claim of right either under its contracts with class members and/or because the acts constituted violations of PIPEDA (and equivalent provincial privacy legislation) as outlined above at paragraphs 60 to 73.

98. With respect to class members resident in British Columbia, Manitoba, Saskatchewan, and Newfoundland and Labrador, Amazon's conduct constituted a tort pursuant to the *Privacy Act*, RSBC 1996, c 373; *The Privacy Act*, CCSM c P125; *The Privacy Act*, RSS 1978, c P-24; and *The Privacy Act*, RSNL 1990, c P-22. In each of these jurisdictions, Amazon's tort is actionable without proof of damage.

Breach of Privacy in Quebec

99. With respect to class members resident in Quebec, Amazon breached arts. 35, 36, and/or 37 of the CCQ by failing to obtain consent of those class members to the (a) collection, (b) retention, and (c) use of their information in accordance with the principles set out in s. 5 of *PPIPS*. As a result, class members resident in Quebec are entitled to moral and material damages pursuant to arts. 1457 and 1643 – 1464 of the CCQ, and punitive damages pursuant to art. 49 of the Quebec Charter of Human Rights and Freedoms.

BREACH OF CONSUMER PROTECTION LEGISLATION

British Columbia

100. With respect to class members resident in British Columbia who used Alexa products:

- a) each class member was a “consumer”;
- b) Amazon was a “supplier;”
- c) Alexa was both a “product” and a “service;” and
- d) The supply of Alexa products and services to class members was a “consumer transaction;”

All within the meaning of section 1 of the *Business Practices and Consumer Protection Act*, SBC 2004. c. 2.

101. Class members are consumers because they purchased an Alexa-enabled product (such as an Amazon Echo speaker, or Alexa-enabled TV), then downloaded the Alexa app to their

device and, in some instances, agreed to be billed a subscription fee for premium Alexa services.

102. Amazon made specific representation in its terms of use and privacy policies that:

Data Use

- a) Collection was limited to what was necessary to respond to the request: “When you speak to Alexa, a recording of what you asked Alexa is sent to Amazon’s cloud where we process your request and other information to respond to you.”;
- b) Amazon omitted to disclose the extent of its collection of data, including false wake word interactions, transcripts, and associated metadata;

Data Retention

- c) That users could delete their data: “you may have the right to ... delete your personal information”;
- d) Amazon omitted to disclose that users could not delete Amazon’s records of Alexa interactions (2014-2019), or that users could not delete *all* of Amazon’s records of their interactions with Alexa (2019-2023);
- e) Amazon omitted to disclose that it kept user information indefinitely by default.

Data Use

- f) Amazon omitted to disclose that user information would be used to train algorithms, A.I.s, and machine learning software;

103. Amazon’s representations were objectively and materially false and misleading to class members because, contrary to Amazon’s representations:

Data Collection

- a) Amazon collected a broad range of information on users every time they interacted with Alexa, even when those interactions were caused by ‘false wakes’, including voice recordings of conversations not meant for Alexa, transcripts of all interactions and metadata associated with all interactions;

Data Retention

- b) Amazon retained the information it collected from Alexa indefinitely by default; and
- c) from 2019 to 2023, when users ‘deleted’ their data through Alexa, Amazon only deleted the voice recording and did not delete the other data it collected, despite making it appear to users that all the data had been deleted;

Data Use

- d) Amazon took the personal data it collected on users through Alexa and used it to train its algorithms, A.I.s and machine learning software.

104. As a result of Amazon’s violations of the *BCPCA*, the plaintiff seeks damages under section 171 of the *BCPCA*; relief under section 172(1) in the form of either a declaration that Amazon’s practices breached the Act and a permanent injunction against further breaches of the act, as well as an order restoring the moneys paid for the products under s. 172(3).

Other Provinces

105. For the purposes of this pleading, “Applicable Consumer Protection Legislation” means the Ontario *Consumer Protection Act, 2002*, S.O. 2002, c. 30; Quebec *Consumer Protection Act*, C.Q.L.R. c. P-40.1; *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2; *Business Practices Act*, C.C.S.M. c. B120; *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2; *Fair Trading Act*, R.S.A. 2000, c. F-2; *Consumer Protection and*

Business Practices Act, S.N.L. 2009, c. C-31.1; and *Business Practices Act*, R.S.P.E.I. 1988, c. B-7.

106. In addition to the breaches of the *BPCPA* pleaded above, the plaintiff pleads that class members in provinces outside of British Columbia were consumers under the Applicable Consumer Protection Legislation which prohibits suppliers who enter into agreements or conduct transactions with consumers from engaging in prohibited unfair practices.

107. To the extent necessary, the plaintiff pleads waiver of notice requirements under the Applicable Consumer Protection Legislation.

108. As pleaded above at paragraph 102, the defendant made specific representations to class members which were objectively and materially false and misleading to class members for the reasons detailed above at paragraph 103.

DAMAGES

109. Class members have each suffered losses and damages from Amazon's breaches of confidence, intrusions upon seclusion, breaches of privacy statutes and breaches of the Applicable Consumer Protection Legislation. The damages claimed include:

- a) damages for breach of the Applicable Consumer Protection Legislation equivalent to all the amounts paid by class members to Amazon for Alexa products and services during the class period;
- b) statutory compensation under the relevant provisions of the Applicable Consumer Protection Legislation, including disgorgement of the profits or revenues received by Amazon through the sale of Alexa products in Canada or through subscription fees for Alexa, rights of rescission, or other equitable relief, including, but not limited to relief under ss. 171 and 172 of the *BCPCA* as detailed above;

- c) punitive damages under s. 49 of the Quebec *Charter of Human Rights and Freedoms*, s. 272 of the Quebec *Consumer Protection Act*, s. 18(11) of the Ontario *Consumer Protection Act*, s. 272 of the Quebec *Consumer Protection Act*, and the comparable sections of the other Applicable Consumer Protection Legislation;
- d) with respect to the privacy torts and the breaches of the provincial privacy acts:
 - i. damages for the inconvenience they experienced from being targeted with unsolicited advertisements while browsing the internet or using their Alexa products;
 - ii. damages for the suffering, distress, humiliation, anguish, reduced trust, feelings of lost privacy, and ongoing increased levels of stress that users experienced from the unlawful intrusion, violations of the Privacy Acts and non-permitted use of their personal information caused by the defendants' wrongful acts. that the plaintiffs and the class members experienced from the defendant's unlawful intrusion into their personal information;
 - iii. general damages to vindicate users' rights under the provincial privacy acts;
 - iv. nominal damages for breach of contract;
 - v. disgorgement of profits for breach contract and breach of confidence; and
 - vi. statutory damages where applicable under the provincial privacy acts.

Legislation

110. The plaintiff pleads and relies on:

- (a) *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
- (b) *Class Proceeding Act*, RSBC 1996, c 34;

- (c) *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A;
- (d) *Consumer Protection Act*, RSA 2000, c C-26.3;
- (e) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;
- (f) *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28;
- (g) *Court Order Interest Act*, RSBC 1996 c 79;
- (h) *Personal Information Protection and Electronic Documents Act* SC 2000, c. 5;
- (i) *Privacy Act*, RSBC 1996, c 373;
- (j) *The Business Practices Act*, CCSM c B120;
- (k) *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2;
- (l) *The Privacy Act*, CCSM c P125;
- (m) *The Privacy Act*, RSNL 1990, c P-22; and,
- (n) *The Privacy Act*, RSS 1978, c P-24.

THE PLACE OF TRIAL

111. The plaintiff proposes that this action be tried at the City of Vancouver.

Form 11 (Rule 4-5 (2))

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading/petition on the Defendants outside British Columbia on the ground that:

The circumstances in section 10 of the Court Jurisdiction and Proceedings Transfer Act are sections 10(e) because it concerns contractual obligations to a substantial extent were to be performed in British Columbia and by its express terms, the contract is governed by the laws of British Columbia; and 10 (h) concerns a business carried on in British Columbia

| | |
|--|---|
| Plaintiff's address for service: | CHARNEY LAWYERS PROFESSIONAL CORP. 602 - 151 Bloor Street West Toronto, ON M5S 1S4 |
| Fax number address for service (if any): | 1-416-964-7416 |
| E-mail address for service (if any): | tedc@charneylawyers.com |
| Place of trial: | Vancouver |
| The address of the registry is: | 800 Smithe Street, Vancouver |

Date: July 15, 2025



Signature of Theodore P. Charney
lawyer for plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Proposed class action regarding damages suffered for breach of contract, breach of privacy and other claims as a result of improper data collection, retention and use by the defendants.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

a motor vehicle accident

medical malpractice

X another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

X a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

X a class action

maritime law

aboriginal law
constitutional law
conflict of laws
none of the above
do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

- a) *Class Proceedings Act*, R.S.B.C. 1996, c. 50
- b) *PIPEDA*, S.C. 2000 c. 5