



Court File No. **VLC-S-S-205247**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

ROBERT ANDREW CRONK

PLAINTIFF

and

LINKEDIN CORPORATION

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs 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 plaintiffs 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,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. Since about 2011, the defendant LinkedIn has displayed advertising to users on behalf of businesses with users' own profile pictures and names. LinkedIn has done so without users' consent, in breach of the *Privacy Act*, section 3 and related enactments, which prohibit using the name and portrait of a person for the purpose of advertising without consent. Through this suit, Canadian users seek to hold LinkedIn accountable for its unlawful conduct and to obtain damages.

The Parties

2. The defendant LinkedIn Corporation (“**LinkedIn**”) is a company incorporated under the laws of Delaware with addresses for service at LinkedIn Corporation, Attn: Legal Dept. (Privacy Policy and User Agreement), 1000 W. Maude Avenue, Sunnyvale, CA 94085, USA and c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 USA. LinkedIn operates a for-profit networking service through www.linkedin.com and related mobile apps. LinkedIn's business is to connect professionals and job seekers with jobs and networking opportunities. LinkedIn sells advertising and offers paid premium services, as well as free accounts. LinkedIn carries on business worldwide, including in British Columbia and Canada, and including by making its services available to users and by selling advertising to Canadian and foreign companies for display to Canadian users.

3. The Plaintiff Robert (Rob) Andrew Cronk is a resident of British Columbia. He is a registered user on LinkedIn.

4. The Plaintiff brings this action on his own behalf and on behalf of all persons in British Columbia, Saskatchewan, Manitoba and Newfoundland & Labrador who were registered users of

LinkedIn with a profile photo at any time after June 2011 up to the date this action is certified as a class proceeding (the “**Class**”, “**Class Members**” and “**Class Period**”).

LinkedIn’s Business

5. LinkedIn operates a platform through www.linkedin.com and related mobile apps. The platform is principally for professionals to describe themselves and make themselves searchable within LinkedIn’s database. People and businesses use LinkedIn to promote their careers and businesses, look for jobs, apply for jobs, announce job openings, locate candidates for jobs, and network more generally. Businesses use LinkedIn as a platform for advertising for job openings and also to advertise and sell their products and services more broadly.

6. LinkedIn was founded on December 28, 2002 and launched on May 5, 2003.

7. LinkedIn has been available to users in Canada since 2003.

8. LinkedIn filed for an initial public offering in January 2011. In 2016, LinkedIn was acquired by Microsoft Corporation for \$26.2 billion USD.

9. By March 2011, LinkedIn had more than 100 million users worldwide. At the time this action is filed, LinkedIn has more than 630 million users worldwide, including approximately 16,750,000 in Canada.

10. It is free to register as a user with LinkedIn.

11. LinkedIn makes money by selling advertising for display to users, selling premium account subscriptions with additional features to users, and by charging corporate and business customers with access to job candidates through its LinkedIn Recruiter product.

12. LinkedIn sells advertising to third parties on the basis that it will be displayed to users. LinkedIn earns a profit on its advertising sales to third party advertisers.

Using LinkedIn

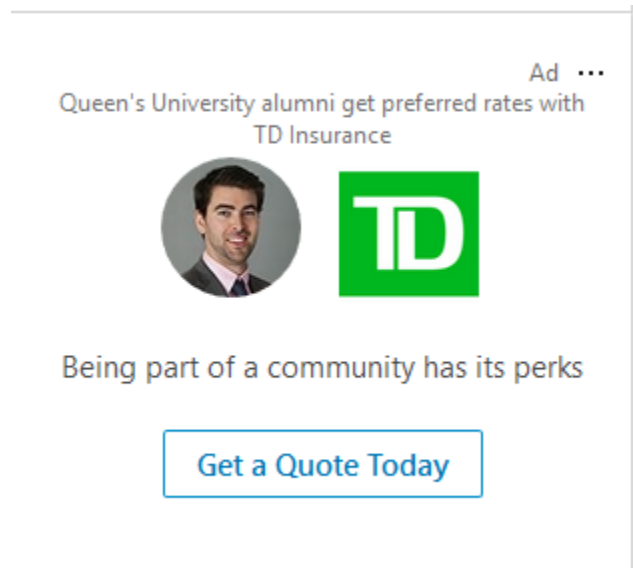
13. Every user on LinkedIn has a profile. To register and create a profile with LinkedIn, users provide their full name and contact information.

14. Each user's name is displayed on their profile ("**registered name**"). LinkedIn requires users to use their name (not a pseudonym) on their profile.
15. Users almost always provide a picture of themselves for their profile ("**profile photo**").
16. Without a profile photo, LinkedIn marks the user profile as "incomplete" and regularly prompts users to upload a profile photo.
17. When a user logs into LinkedIn, they land on their "Home" page. On the Home page, and other pages throughout the LinkedIn website and mobile apps including "My Network", "Jobs", "Messaging" and "Notifications", LinkedIn displays advertising to users in addition to the other content on the pages.

LinkedIn's Advertising

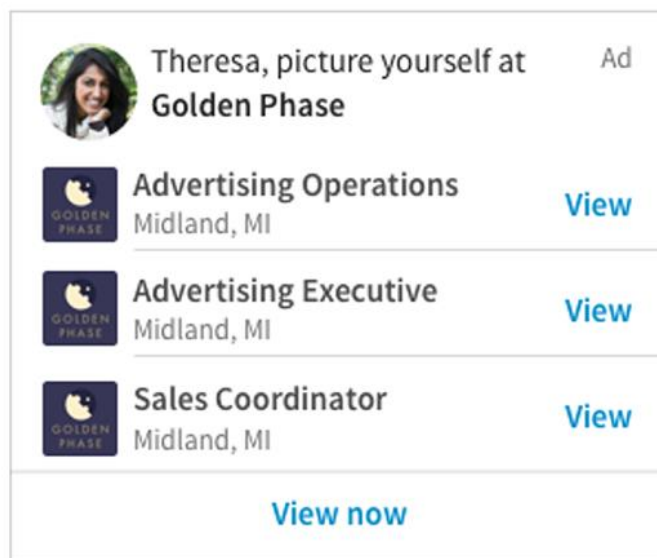
18. LinkedIn sells advertising in a variety of formats.
19. One advertising format used by LinkedIn is "**Dynamic Ads**". Dynamic Ads are personalised ads that change for each member. Dynamic Ads use members' profile photo, name, and job function to create customised ads for each member. Each member sees their personalised information; member profile information is not displayed to other members.
20. Dynamic Ads are shown to LinkedIn users with the word "Ad" in the top right.
21. Dynamic Ads embed the LinkedIn user's own profile photo and/or registered name in the body of the ad.
22. Dynamic Ads also include the content text or image, including the logo, of the business or brand that has purchased the advertisement.

23. Dynamic Ads look like this:



24. Dynamic Ads include a subset of advertising variously referred to as “Dynamic Jobs Ads”, “Jobs You May Be Interested In Ads” and “Picture Yourself Ads”. These advertisements sold by LinkedIn are targeted specifically at companies seeking employees. In addition to embedding a user’s own profile photo and registered name, they use the phrase “Picture Yourself at” followed by the name of the business with the job opening.

25. Picture Yourself Ads look like this:



26. Dynamic Ads were introduced on LinkedIn in about June 2011.

27. Third-party advertisers purchase Dynamic Ads for the purposes of advertising and promoting the sale of, and other trading in, their property and services, and for other purposes of gain to them as businesses.

28. LinkedIn sells Dynamic Ads for the purposes of advertising or promoting the sale of, and other trading in, the property or services of the third-party advertisers, and for other purposes of gain to LinkedIn. LinkedIn profits from the sale of Dynamic Ads that include user's registered names and profile photos.

LinkedIn Users did not Consent to having their Names, Portraits and Likenesses Used in Dynamic Ads

29. LinkedIn's User Agreement and Privacy Policy are silent on the existence of Dynamic Ads. LinkedIn's User Agreement and Privacy Policy do not provide express or implied consent to LinkedIn to use users' profile photos or registered names in Dynamic Ads.

30. Dynamic Ads are enabled by default for every new LinkedIn user. LinkedIn does not seek consent from new users to enable Dynamic Ads or for the use of users' profile photos and names in Dynamic Ads. LinkedIn does not provide notice to new users that Dynamic Ads will be automatically enabled or that users' profile photos and names will be used in Dynamic Ads.

31. When LinkedIn introduced Dynamic Ads, it enabled Dynamic Ads automatically for all existing LinkedIn users. LinkedIn did not seek consent from existing users to enable Dynamic Ads or for the use of users' profile photos or names in Dynamic Ads. LinkedIn did not provide notice to users that it was enabling Dynamic Ads or that users' profile photos and names will be used in Dynamic Ads.

32. LinkedIn permits users to manually turn off the use of their profile photo and registered name in advertising including Dynamic Ads. However, LinkedIn does not make this option easily accessible to its users.

33. To access the menu, a user must navigate multiple menus:

Me --> Settings & Privacy --> Ads --> General advertising preferences --> Profile data for ad personalization --> Select [Yes/No]

General advertising preferences

Profile data for ad personalization

Close

Control how certain ads appear to you

Yes

Can LinkedIn use your profile photo and profile information (like name or company) to personalize the content of promoted jobs and ads? NOTE: Only you can see ads with your photo.

Yes

Changes typically take up to 48 hours to become effective.

35. The Plaintiff has used a profile photo of himself for his LinkedIn profile. The Plaintiff and Class Members have not consented to the use of their profile photos and registered names for use in Dynamic Ads by LinkedIn. Nevertheless, LinkedIn has sold advertising using the Plaintiff and Class Members' registered names and profile photos in Dynamic Ads and has profited from the sale of that advertising.

36. LinkedIn developed and implemented these deceptive setting changes – or “dark patterns” – intentionally to benefit itself through the sale of advertisements using users' profile photos and registered names for Dynamic Ads. LinkedIn did so knowing that users had not consented to and were not aware of the setting change.

37. The senior officers and directors of LinkedIn were aware at all material times that users did not have notice and were not consenting to the use of their profile photos and registered names for Dynamic Ads on LinkedIn and in fact authorised LinkedIn's conduct.

38. At the time this action is filed, the wrongdoing continues.

Part 2: RELIEF SOUGHT

39. An order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50;
40. Statutory damages for breach of the *Privacy Act* for residents of British Columbia;
41. Statutory damages or disgorgement for breach of the *Privacy Act SK* for residents of Saskatchewan;
42. Statutory damages or disgorgement for breach of the *Privacy Act MB* for residents of Manitoba;
43. Statutory damages or disgorgement for breach of the *Privacy Act NL* for residents of Newfoundland & Labrador;
44. An injunction to restrain the impugned practice by LinkedIn by requiring that Dynamic Ads be disabled by default for users in Canada;
45. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;
46. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breach of the Privacy Act (BC)

47. The *Privacy Act*, RSBC 1996, c 373, s 3(2) creates a tort, actionable without proof of damage, where a person uses the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services, unless that other, or a person entitled to consent on his or her behalf, consents to the use for that purpose.
48. A user's profile photo on LinkedIn is a "portrait" within the meaning of the *Privacy Act*, s 3(1). A user's registered name on LinkedIn is a "name" within the meaning of the *Privacy Act*, s 3(1).

49. Dynamic Ads on LinkedIn displaying a user's registered name or profile photo are used "for the purpose of advertising or promoting the sale of, or other trading in, property or services" within the meaning of the *Privacy Act*, s 3(2).

50. The Plaintiff and Class Members resident in British Columbia did not consent to the use of their user profile photos or registered names on LinkedIn for advertising via Dynamic Ads for the purpose of the *Privacy Act*, s 3(2).

51. By its conduct set out above, LinkedIn has breached the *Privacy Act*, s 3(2).

52. The Plaintiff and Class Members resident in British Columbia are entitled to statutory damages as a result of LinkedIn's breaches under the *Privacy Act*, s 3(2).

53. Class Members are entitled to an injunction under the *Law and Equity Act*, RSBC 1996, c 253 to restrain this conduct by LinkedIn. In particular, the Plaintiff and Class members are entitled to an injunction to restrain the impugned practice by LinkedIn by requiring that Dynamic Ads be disabled by default for users in Canada for all accounts.

Breach of the Privacy Act (SK)

54. The *Privacy Act*, RSS 1978, c P-24, ss 2 and 3(c) create a tort, actionable without proof of damage, for a person willfully and without a claim of right to violate the privacy of another person including through the use of the name or likeness of a person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, the person is identified or identifiable and the user intended to exploit the name or likeness of that person without the consent, expressed or implied, of that person.

55. A user's profile photo on LinkedIn is a "likeness" within the meaning of the *Privacy Act SK*, s 3(c). A user's registered name on LinkedIn is a "name" within the meaning of the *Privacy Act SK*, s 3(c).

56. Dynamic Ads on LinkedIn displaying a user's registered name or profile photo are used "for the purposes of advertising or promoting the sale of, or any other trading in, any property or

services, or for any other purposes of gain to” LinkedIn within the meaning of the *Privacy Act SK*, s 3(c).

57. Class Members resident in Saskatchewan did not consent to the use of their profile photos or registered names on LinkedIn for advertising via Dynamic Ads for the purpose of the *Privacy Act SK*, s 3. LinkedIn acted willfully and without a claim of right.

58. By its conduct set out above, LinkedIn has breached the *Privacy Act SK*, ss 2 and 3(c).

59. Class Members resident in Saskatchewan are entitled to statutory damages as a result of LinkedIn’s breaches under the *Privacy Act SK*, s 2 under s 7(a) or disgorgement under s 7(c).

60. Class Members are entitled to an injunction to restrain this conduct by LinkedIn under the *Privacy Act SK*, s 7(b).

Breach of the Privacy Act (MB)

61. The *Privacy Act*, CCSM, P125, s 2 and 3(c) creates a tort, actionable without proof of damage, for a person to substantially, unreasonably, and without claim of right, violates the privacy of another person by the unauthorized use of the name or likeness of that person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, that person is identified or identifiable and the user intended to exploit the name or likeness of that person, without the consent, expressed or implied, of that person.

62. A user’s profile photo on LinkedIn is a “likeness” within the meaning of the *Privacy Act MB*, s 3(c). A user’s registered name on LinkedIn is a “name” within the meaning of the *Privacy Act MB*, s 3(c).

63. Dynamic Ads on LinkedIn displaying a user’s registered name or profile photo are used “for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to” LinkedIn within the meaning of the *Privacy Act MB*, s 3(c). LinkedIn acted willfully and without a claim of right.

64. Class Members resident in Manitoba did not consent to the use of their user profile photos or registered names on LinkedIn for advertising via Dynamic Ads for the purpose of the *Privacy Act MB*, s 2.

65. By its conduct set out above, LinkedIn has breached the *Privacy Act MB*, ss 2 and 3(c).

66. Class Members resident in Manitoba are entitled to statutory damages as a result of LinkedIn's breaches under the *Privacy Act MB*, s 2 under s 4(1)(a) or disgorgement under s 4(1)(c).

67. Class Members are entitled to an injunction to restrain this conduct by LinkedIn under the *Privacy Act MB*, s 4(1)(b).

Breach of the Privacy Act (NL)

68. The *Privacy Act*, RSNL 1990, c P-22, ss 3(1) and 4(c) creates a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of an individual (natural person) by use of the name or likeness or voice of an individual for the purposes of advertising or promoting the sale of, or other trading in, property or services, or for other purposes of advantage to the user where, in the course of the use, the individual is identified or identifiable and the user intended to exploit the name or likeness or voice of that individual without the consent, expressed or implied, of that person.

69. A user's profile photo on LinkedIn is a "likeness" within the meaning of the *Privacy Act NL*, s 4(c). A user's registered name on LinkedIn is a "name" within the meaning of the *Privacy Act NL*, s 4(c).

70. Dynamic Ads on LinkedIn displaying a user's registered name or profile photo are used "for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to" LinkedIn within the meaning of the *Privacy Act NL*, s 4(c). LinkedIn acted willfully and without a claim of right and intended to exploit the name or likeness of Class Members.

71. Class Members resident in Newfoundland & Labrador did not consent to the use of their user profile photos or registered names on LinkedIn for advertising via Dynamic Ads for the purpose of the *Privacy Act NL*, s 4(c).

72. By its conduct set out above, LinkedIn has breached the *Privacy Act NL*, ss 3 and 4(c).

73. Class Members resident in Newfoundland & Labrador are entitled to statutory damages as a result of LinkedIn's breaches under the *Privacy Act NL*, s 3 under s 6(1)(a) or disgorgement under s 6(1)(c).

74. Class Members are entitled to an injunction to restrain this conduct by LinkedIn under the *Privacy Act NL*, s 6(1)(b).

Discoverability

75. The Plaintiff and Class Members could not reasonably have known that

- a. they sustained injury, loss or damage as a consequence of LinkedIn's actions; or
- b. having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages until, at the earliest, the date this action is filed.

76. The Plaintiff and Class Members plead and rely on postponement and discoverability under the *Limitation Act*, SBC 2012, c 13, s 8.

77. In addition, LinkedIn, though its manipulation of settings concerning Dynamic Ads, willfully concealed the fact of the misuse of the Plaintiff and Class Members' private information without consent, and that this was caused or contributed to by LinkedIn's acts or omissions. The Plaintiff and Class Members rely on *Pioneer Corp. v. Godfrey* and the *Limitation Act*, s 21(3).

78. The Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No M098 to suspend the running of the limitation period from March 26, 2020.

Service on LinkedIn

79. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on LinkedIn pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

80. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:
- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
 - b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

81. An action under the *Privacy Act* must be determined in the Supreme Court of British Columbia (*Privacy Act*, s 4).

Plaintiff's address for service:

Hammerberg Lawyers LLP
1220 – 1200 West 73rd avenue
Vancouver, British Columbia V6P 6G5

Fax number for service: 604-269-8511

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: May 14, 2020



Signature of lawyer for plaintiff
Joel Zanatta
Kevin McLaren
Alexia Majidi
Mathew Good

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.

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

The plaintiff claims the right to serve this pleading on the defendant LinkedIn Corporation outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

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:

This is a claim for breaches of the Privacy Act in the delivery of LinkedIn's services.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- 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
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 50

Privacy Act, RSBC 1996, c 373

Limitation Act, SBC 2012, c 13