Foreword

Justice Rosalie Silberman Abella
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The Canadian Journal of Comparative and Contemporary Law has produced yet another invaluable intellectual contribution to yet another intellectually dynamic area of law. To tackle the privacy issues in Data Protection is to scrutinize the past in order to make brave predictions about an unknowable future about technology, an overgrown field with a haphazard array of fences in need of repair.

This volume will be an outstanding source of insights for anyone who cares about the relationship between privacy and progress, and its impact on who we are as individuals, as a society, and as a global community. This core mission — assessing the future of privacy in technology's revolutionary wake — gets careful and probing scrutiny in this volume.

Fiona Brimblecombe and Gavin Phillipson explore the implications of the European Union's new "right to be forgotten" found in Article 17 of the General Data Protection Regulation, and how the Strasbourg Court's privacy jurisprudence has adapted to the revised informational contours. The impact of the right to be forgotten is also developed in Jacquelyn Burkell and Jane Bailey's article on how unredacted online public access to court records may have a disproportionately harmful impact on vulnerable groups, raising interesting questions about the role of equality rights.

Ontario's "Privacy by Design" attempts to regulate privacy through the introduction of facial recognition technology in some existing cameras in casinos and the expanded use of cameras in the public transit system, offer a case study by Avner Levin into what works and what works less well. His call for a collaborative regulatory model is echoed throughout the volume. N.A. Moreham compares how different jurisdictions (England, Ontario, and New Zealand) assess privacy interests in the torts context, arguing that New Zealand's test — the "high offensiveness" privacy test — is ultimately ineffective and should be replaced by a test

looking at what "reasonable expectation of privacy" a plaintiff has in the information or activity in question.

A call for greater privacy protection from ubiquitous surveillance practices is the focus of Moira Paterson's review of the tests and assumptions that need to be revisited and strengthened in this context. Megan Richardson moves us towards the internet and the profound risk it poses not only to an individual's privacy, but to the ability to control his or her personal identity, and, relatedly, dignity.

Looking at how the European Union, the United States, and Canada deal with personal information that has become public, leads Andrea Slane to consider what role the concept of fairness should have in dealing with the online marketplace. And Norman Witzleb and Julian Wagner offer a comparative approach to data protection laws in Australia, Canada and the European Union, outlining various approaches to personal information, identity, and privacy.

The dizzying legal and policy options at play in all of these wonderfully thoughtful articles, seem at the same time to suggest urgency and caution. They are a timely and humbling Venn diagram of intersecting problems, solutions, concerns, and aspirations. The implications of the intensity, pervasiveness and speed of technological transformations are compellingly reviewed in the articles by Brimblecombe and Phillipson and by Patterson. The resulting need for more robust and proactive legislative (and judicial) responses are magnetically covered in the article by Paterson, but also in those of Burkell and Bailey, Levin, Slane, Witzleb and Wagner. And finally, the emphatic need for humanity and dignity in the social network universe is powerfully elucidated not only by Slane, Burkell and Bailey, but also by Brimblecombe and Phillipson, Moreham and Richardson.

I feel lucky to have had the chance to learn from these authors, and congratulate them — and the editors — for enriching us with their insights and inspiration.