

Legal Innovation

Use of AI by legal profession raises accuracy, reliability concerns | Ryan Flewelling and Neelum Raja

By **Ryan Flewelling and Neelum Raja**

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(July 19, 2023, 10:03 AM EDT) -- On June 23, in a first for a Canadian court, the Manitoba Court of King's Bench issued a directive requiring parties to disclose if artificial intelligence (AI) was used in the preparation of court submissions.

The directive signed by Chief Justice Glenn Joyal raises concerns about the "reliability and accuracy" of AI-generated submissions. The directive states:

With the still novel but rapid development of artificial intelligence, it is apparent that artificial intelligence might be used in court submissions. While it is impossible at this time to completely and accurately predict how artificial intelligence may develop or how to exactly define the responsible use of artificial intelligence in court cases, there are legitimate concerns about the reliability and accuracy of the information generated from the use of artificial intelligence.



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In an interview with *Law360 Canada*, Chief Justice Joyal indicated that when a party to a proceeding discloses having used AI, a judicial officer will determine whether it is permissible, verifiable and "reliable for its intended and court purposes."

Recent proliferation of AI

In recent years, AI has been harnessed to streamline and enhance various aspects of legal work, including research. With the release of the AI chatbot ChatGPT in late 2022, which is currently free for anyone with an Internet connection to use, people have been testing its ability to answer questions and create written content. Legal professionals are no exception.

The writers have tested ChatGPT's ability to draft fictitious legal documents and answer hypothetical research questions. ChatGPT is adept at creating simple letters and contracts. However, its legal research skills are lacking. It often miscites statutory provisions or even overlooks their existence (but to its credit, ChatGPT candidly admits it has missed something, if the user points it out). ChatGPT's knowledge base (dataset) is also expressly limited to information/events up to June 2021, which restricts its usefulness in areas where legislation has been recently amended or the legal principles at play are dynamic and evolving.

A cautionary tale

Given the concerns about the accuracy and reliability of AI-generated content, is there room for it in the legal profession, where accuracy and reliability are the cornerstones not only of writing and research, but also of hard-earned professional reputations? A recent U.S. federal court case should give pause to lawyers.

In June 2023, Judge P. Kevin Castel of the U.S. District Court for Southern New York (*Mata v. Avianca, Inc.*, 2023 U.S. Dist. LEXIS 108263) imposed sanctions on two plaintiffs' lawyers for submitting a legal brief which included six fictitious case citations generated by ChatGPT. The lawyers admitted to utilizing ChatGPT to research their client's case. The defendant's counsel alerted the court when they could not locate reports of those six cases. In sanctioning the two plaintiffs' lawyers, Judge Castel stated that utilization of AI was not "inherently improper" but professional ethics require lawyers to ensure the accuracy of court filings.

Best practices for AI in legal context

As noted by Judge Castel, there is certainly room for AI in the legal profession. One such use is to overcome the all-too-familiar state of staring at a blank page when commencing drafting. AI-powered writing assistants can provide the drafter with inspiration and generate preliminary versions of documents. Legal researchers can also leverage AI's advanced algorithms as a starting point in efficiently navigating a plethora of sources.

Despite the advantages AI can offer the legal professional, human oversight and scrutiny in any AI-assisted legal task is of paramount importance. As advanced as AI may be, its shortfalls are readily apparent, as the writers discovered when testing ChatGPT's capabilities. Blindly employing AI in the legal context risks introducing errors and increases the potential for malpractice claims. At this early juncture, lawyers should view AI as a tool to be employed to increase efficiency, and not a substitute for professional skill and judgment.

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