

ETHICAL FRAMEWORK FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (AI) IN THE LEGAL PROFESSION

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The rapid adoption of generative artificial intelligence (AI) into the legal practice has transformed the profession, significantly improving efficiency in areas such as legal research, drafting, eDiscovery, and client interactions. However, this rapid adoption has introduced ethical, regulatory, and professional challenges, including risks of AI hallucinations, breaches of client confidentiality, embedded biases, professional responsibility and liability, and concerns about the unauthorized practice of law. Each of these challenges implicates fundamental duties under the rules professional conduct, such as the duty of competence, duty of honesty and candour, and duty of confidentiality. The paper explores how these ethical duties provide a framework for analyzing AI's impact on legal practice, and how professional regulators can ensure that technological innovation does not undermine lawyers' accountability and the integrity of the justice system.

The paper goes further to explore the current regulatory responses to the use of generative AI in legal practice in Canada, including directives from law societies and courts emphasizing AI competency and disclosure requirements. It concludes with a set of recommendations, including the development of clear AI-specific ethical guidelines, mandatory AI training for lawyers, and safeguards against the unauthorized practice of law through AI. The paper stresses the need for a balanced approach that maximizes AI's benefits while ensuring accountability, transparency, and professional integrity, ultimately preserving public trust and the credibility of the justice system.

L'adoption rapide de l'intelligence artificielle (IA) générative dans la pratique du droit a transformé la profession en offrant d'importants gains d'efficacité dans des tâches comme la recherche juridique, la rédaction, la preuve électronique et les interactions avec le client. Toutefois, cette flambée a engendré des problèmes déontologiques, réglementaires et professionnels, notamment les risques liés aux hallucinations d'IA, aux atteintes au secret professionnel, aux préjugés algorithmiques, aux responsabilités et

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obligations professionnelles et aux dangers posés par la pratique illégale du droit. Chacun de ces problèmes implique des responsabilités fondamentales encadrées par les règles de déontologie : les devoirs de compétence, d'honnêteté et de franchise, et l'obligation au secret professionnel. L'auteur propose une réflexion encadrée par ces devoirs déontologiques pour analyser les répercussions de l'IA sur la pratique du droit, ainsi qu'une réflexion sur les façons dont les autorités de réglementation professionnelle pourraient empêcher l'innovation technologique de déresponsabiliser les juristes et d'affaiblir l'intégrité du système de justice.

L'auteur va plus loin : il étudie les actuelles solutions réglementaires à l'utilisation de l'IA générative dans la pratique du droit au Canada, y compris les directives des barreaux et des tribunaux privilégiant les exigences encadrant la communication d'information et la compétence des outils d'IA. L'article se conclut par une série de recommandations, notamment la création de normes déontologiques claires sur l'IA, une formation obligatoire sur l'IA pour les juristes, et des garde-fous contre la pratique illégale du droit par l'intermédiaire de l'IA. L'auteur insiste sur la nécessité d'une stratégie équilibrée qui maximiserait les avantages de l'IA tout en garantissant la responsabilisation, la transparence et l'intégrité professionnelle, afin de protéger la confiance du public et la crédibilité du système de justice.

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1. Introduction

The integration of artificial intelligence (AI) into the legal profession marks a transformative era in legal practices, offering both unprecedented efficiencies and novel ethical challenges. AI, at its core, has been associated with “machines that are capable of performing tasks that, if performed by a human, would be said to require intelligence.”² These tasks include but are not limited to reasoning, generalization, learning from past experiences, and even understanding natural language. AI is now increasingly being used in various aspects of legal practice, such as legal research, eDiscovery document review,³ and case law analysis⁴ among many others.

One of the most transformative impacts of AI in law practice is its ability to automate many routine tasks currently performed by lawyers. However, with this transformation comes many benefits—but also ethical challenges that have not previously been witnessed in the legal profession. These challenges are evident in the increasing number of cases where lawyers have used generative AI tools to conduct research in the course of preparing documents filed in legal proceedings, with the documents containing nonexistent cases fabricated by AI, often referred to as “bogus cases.”⁵ This has resulted in sanction proceedings against the lawyers, but most importantly, such incidents highlight the need to identify and address

² Matthew U Scherer, “Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies” (2016) 29:2 *Harvard J L & Tech* 354 at 362.

³ Gideon Christian, “Predictive Coding: Adopting and Adapting Artificial Intelligence in Civil Litigation” (2019) 97:3 *Can Bar Rev* 486 at 498 [Christian, “Predictive Coding”].

⁴ Daniel Schwarcz & Jonathan H Choi, “AI Tools for Lawyers: A Practical Guide” (2023) 108 *Minn L Rev Headnotes* 1.

⁵ Rohan Goswami, “[ChatGPT cited ‘bogus’ cases for a New York federal court filing. The attorneys involved may face sanctions](#)” (30 May 2023), online: <cnbc.com> [perma.cc/93SK-CA6D].

the many ethical implications arising from the use of this technology in the legal profession.

This research investigates the ethical challenges posed by AI technologies, with particular attention to the use of generative AI in the legal profession. This includes issues arising from uploading confidential information into open-source AI technology platforms, the potential of generative AI to generate bogus cases, as well as deepfake audio and video evidence that could be filed in court. Additionally, it examines the ethical challenges implicated in the risk of inaccurate or misleading legal information stemming from lawyers' reliance on generative AI, professional responsibility and liability for lawyer's use (or misuse) of AI tools as well as the potential for the unauthorized practice of law through the use of AI tools to provide legal advice, among other issues.

Regulating the use of generative AI in the legal profession is one of the biggest professionalism issues faced by the profession today. This problem will grow as more sophisticated versions of generative AI technologies are developed. Of utmost importance to the profession today is the development of ethical guidelines to ensure responsible and ethical use of the technology. These guidelines will contribute to the development of best practices, thereby enhancing transparency, fairness, and accountability in the use of generative AI within the profession. While generative AI has the potential to radically transform legal practice for good if properly regulated and used, failure to do so will result in several negative outcomes: professionalism issues for legal practitioners, public loss of confidence in the profession and the justice system and missed access to maximal benefits from technological advancement in the AI field. Ultimately, while generative AI can transform legal work, the profession must innovate responsibly—in a manner consistent with its core obligations—to maintain public trust in the legal system.

2. The Transformative World of Generative Artificial Intelligence Technology

The term Artificial Intelligence (AI) broadly refers to computer systems that perform tasks typically requiring human intelligence, such as learning or problem-solving. AI is transforming the way humans interact with technology, driving innovation across various sectors. One of the most groundbreaking advancements in AI is generative AI, which has the capacity to create original content, such as text and images. This technology is reshaping numerous fields, including the legal profession, by enhancing efficiency and automating complex tasks. At the core of generative AI are machine learning and natural language processing—powerful

computational techniques that enable AI systems to understand, generate, and manipulate human language with remarkable sophistication.

i) Artificial Intelligence and Machine Learning

Machine Learning (ML) is a core subset of AI that enables computers to learn from training data and improve over time without being explicitly programmed.⁶ In ML, algorithms are trained on datasets. This training enables them to make predictions or decisions based on patterns found in the training data. Rather than following programmed rules or codes, an ML system *learns* a model of the real-world situation from its training examples, allowing it to handle tasks it was not explicitly coded to do. This data-driven learning process gives ML systems a form of adaptability and pattern recognition ability that simulates intelligence.

ML is not a single technique but an umbrella term encompassing many approaches and applications.⁷ Machine learning is used in a wide variety of fields and tasks today from language translation to image recognition to speech understanding. ML is an engine that learns from examples and experience to perform tasks effectively.

ii) Natural Language Processing

Within the broad field of ML, Natural Language Processing (NLP) is a specialized subdiscipline focused on enabling computers to work with human language. NLP combines techniques from computer science, linguistics, and machine learning to allow machines to understand, interpret, and generate text or speech in human or “natural” languages such as English, French, or Swahili. In essence, NLP bridges the communication gap between humans and computers by allowing humans to interact with computers using everyday language instead of a computer programming language or code.⁸ Common NLP applications include language translation, voice assistants, or speech recognition such as converting spoken audio to text.⁹

⁶ Christian, “Predictive Coding”, *supra* note 3 at 489.

⁷ Harry Surden, “Machine Learning and Law: An Overview” in Roland Vogl, ed, *Research Handbook on Big Data Law* (Cheltenham: Edward Elgar Publishing, 2021) 171 [Surden, “Machine Learning”]; James A Nichols, Hsien W Herbert Chan & Matthew AB Baker, “Machine learning: applications of artificial intelligence to imaging and diagnosis” (2019) 11(1) *Biophysical Reviews* 111.

⁸ Harry Surden, “ChatGPT, Large Language Models, and Law” (2024) 92:5 *Fordham L Rev* 1941 at 1943, 1951 [Surden, “ChatGPT”].

⁹ Diksha Khurana et al, “Natural language processing: state of the art, current trends and challenges” (2022) 82:1 *Multimedia Tools & Applications* 3713 [Diksha Khurana et al].

The dream of a computer that can fluently converse in human language is not new. An early milestone in the history of NLP came from Alan Turing, one of the pioneers of computer science.¹⁰ In the decades following Turing's vision, NLP evolved through several phases. Early approaches in the 1950s–1970s were rule-based, relying on hand-crafted grammatical rules.¹¹ Later, in the 1980s–1990s, statistical methods that learned from large text corpora became popular, using techniques like hidden Markov models for speech and translation.¹² Machine learning brought significant advances to NLP by allowing algorithms to learn language patterns from data rather than rely solely on rigid rules.¹³ Notably, the late 2010s saw the rise of neural network-based NLP, especially with the development of the transformer architecture in 2017.¹⁴ These neural approaches enabled much more fluent and contextually aware language generation and understanding than earlier methods.

iii) Generative AI and Generative Modeling

A major breakthrough within machine learning has been the rise of generative models—algorithms that go beyond analyzing or classifying data, to *create new contents* resembling the data they were trained on. Generative AI is a subset of AI systems capable of creating a wide range of new and original content that spans texts, images, audio, videos, and more.¹⁵

Generative AI systems are trained using extensive datasets, enabling them to generate novel content closely resembling those found within their training set. The term “generative” is associated with the unique ability of

¹⁰ AM Turing, “Computing Machinery and Intelligence” (1950) 59:236 *Mind* 433.

¹¹ The Georgetown-IBM experiment in 1954 and the development of ELIZA in 1966 are notable examples of rule-based systems. See Manisha Sirsat, “[History of Large Language Models | From 1940 to 2023](#)” (29 April 2024), online: <ai-researchstudies.com> [perma.cc/2SDZ-N6VT]; Andrew W Lo, Manish Singh & ChatGPT, “From ELIZA to ChatGPT: The Evolution of Natural Language Processing and Financial Applications” (2023) 49:7 *J of Portfolio Management* 201.

¹² Neri Van Otten, “[The History Of Natural Language Processing & Potential Future Breakthroughs](#)” (23 June 2023), online: <spotintelligence.com> [perma.cc/VHE6-YBZS].

¹³ Jan Sawicki, Maria Ganzha & Marcin Paprzycki, “The State of the Art of Natural Language Processing—A Systematic Automated Review of NLP Literature Using NLP Techniques” (2023) 5:3 *Data Intelligence* 707; Diksha Khurana et al, *supra* note 9.

¹⁴ The transformer architecture was introduced in 2017 and revolutionized NLP with models like BERT and GPT. See Andrea Filippo Ferraris et al, “The architecture of language: Understanding the mechanics behind LLMs” (2025) 1:11 *Cambridge Forum on AI: Law and Governance* 1.

¹⁵ OpenAI, *ChatGPT*, response to “[Definition of ‘generative artificial intelligence’](#)” (12 September 2024), online: <www.chatgpt.com>.

this branch of AI technology to create human-like content; this is what differentiates it from other AI systems such as predictive AI models that focus on analysis or decision-making.¹⁶ For instance, an AI model trained on data analysis can classify an email as spam or identify a malignant tumor in an X-ray based on learned patterns. In contrast, generative models focus on producing entirely new content that closely resembles the data they were trained on, such as generating realistic images, text, or audio. This distinction is why generative AI stands out—it *creates* rather than *identifies*. Thus, generative AI stands out for its ability to generate novel contents.

In the context of the legal profession, generative AI can produce drafts of legal documents such as pleadings, suggest legal precedents, or even develop comprehensive litigation strategies for lawyers. The beauty of generative AI lies in its ability to not just analyze *but also create* new legal information, making it a powerful tool for innovation and efficiency in legal workflows.

iv) Large Language Models (LLMs)

One of the most powerful developments in NLP to date is the advent of Large Language Models (LLMs). LLMs are advanced AI models trained on extremely large collections of textual contents (like books, websites, and articles) to predict and generate human-like text. They represent a leap in NLP capability—so much so that the current era of NLP research is often referred to as the era of large language models.¹⁷

Within the NLP family, LLMs are specifically designed to process and generate textual content. These AI models are considered “large” because they are trained on vast amounts of text data and contain a high number of parameters, enabling them to understand and produce human-like text.¹⁸ An LLM is essentially a very powerful predictive text engine. When “prompted” by the user, it responds to the “prompt” or query by predicting the most likely next words, and it does so repeatedly to generate coherent sentences and paragraphs. What makes LLMs transformative is the scale at which they operate. They are trained on vast datasets of text, comprising billions of words from books, websites, articles, and other sources, which enables them to understand the patterns and complexity of human language.

¹⁶ Surden, “ChatGPT”, *supra* note 8 at 1955.

¹⁷ Arkaitz Zubiaga, “Natural language processing in the era of large language models” (2024) 6(1) *Frontiers in Artificial Intelligence* 1.

¹⁸ Nick Noonan, “[Creative Mutation: A Prescriptive Approach to the Use of ChatGPT and Large Language Models in Lawyering](#)” (13 March 2023) at 16, online: <ssrn.com/abstract=4406907> [perma.cc/FR9M-F6CB] [Noonan].

LLM training process is often self-supervised. An LLM might be given a real sentence with a word missing and tasked with predicting the missing word, over and over again billions of times. This process enables it to internalize the structure of the language. By absorbing patterns from massive textual corpora, LLMs can then *generate* text that is remarkably plausible and often hard to distinguish from human-written text.

It is important to note that when an LLM generates text, it is not because it truly “understands” the meaning as a human would. Instead, it understands and leverages statistical patterns. As Bender et al described, a language model is essentially “a system for haphazardly stitching together sequences of linguistic forms it has observed in its vast training data, according to probabilistic information about how they combine, but without any reference to meaning.”¹⁹ The authors referred to the model as “stochastic parrot”, underscoring the fact that while LLMs are capable of generating coherent and contextually appropriate responses, they fundamentally operate by randomly sampling from the probabilities or “intelligently” parroting what they have learned from the training data.

Simply put, the LLM is a well-trained, extremely advanced predictor of the next word, piecing together likely combinations that sound coherent, but it does not know *why* the text means what it means. It has no true intent or comprehension behind the words—it is intelligently good at repeating the patterns of language usage it learned from training data. Thus, LLMs excel at producing text that *looks* right, *sounds* right, but without truly *understanding* the meanings. They lack genuine awareness or common-sense reasoning beyond the patterns in data.

a) “Learning” and “Understanding” in the Context of LLMs

While the terms “learning” and “understanding” are often used to describe the capabilities of LLMs, it is crucial to recognize that their learning processes fundamentally differ from human learning. LLMs “learn” using a neural network architecture known as a transformer, which processes text through computational methods and identifies statistical patterns within massive datasets.²⁰ An LLM’s learning during training is purely about spotting patterns in text. It figures out that certain words or phrases often follow others (e.g. burger and fries), or that certain sentence structures are more likely in some contexts than others.

¹⁹ Emily M Bender et al, “[On the Dangers of Stochastic Parrots: Can Language Models Be Too Big?](#)” (Paper delivered at the 2021 ACM Conference on Fairness, Accountability, and Transparency, 01 March 2021) at 616–617, online: <dl.acm.org> [perma.cc/2QMA-YEAS].

²⁰ Ashish Vaswani et al, “[Attention Is All You Need](#)” (12 June 2017) at 2–7, online: <arxiv.org>[abs/1706.03762].

In contrast, human learning goes far beyond textual reading or processing to involve sensory experiences, social interactions, and cognitive development. Humans connect words based on meanings, underlying concepts, and personal experiences and not just on mere statistical probabilities or patterns.

Due to their extensive exposure to diverse datasets during training, LLMs excel at learning and working with patterns in data more effectively than humans can. However, they lack the ability to *learn* and *understand* contexts and nuances that go beyond their training data and textual sources. Their learning is rooted in artificial intelligence, which lacks the cognitive intelligence that humans use to navigate complex real-world situations and commonsense reasoning. Consequently, LLMs often struggle with tasks that require an understanding beyond learned patterns resulting in hallucination.

Recognizing that LLMs are pattern learners, not reasoners, is essential for effectively leveraging these tools. Legal professionals are able to determine which legal tasks are suitable for automation with LLMs and which should rely on the cognitive intelligence of a human legal professional. Even when certain legal tasks are automated, human oversight remains critical to ensure the accuracy, appropriateness, and ethical integrity of the AI-generated output.

A very popular example of an LLM tool is ChatGPT, released by Open AI in 2022. ChatGPT is an interactive LLM designed to engage in dialogue with the user by accepting their prompts or questions and then responding by convincingly mimicking human writing styles.²¹ Using patterns from training data, ChatGPT generates responses that are not only relevant but also very closely resemble human responses to similar questions. It was the first LLM to consistently provide relevant responses to a wide range of questions and prompts. It has even written compelling fake scientific research-paper abstracts—ones that were so compelling and plausible that scientific experts in the relevant fields were unable to detect them as fakes.²² In the legal domain, ChatGPT has demonstrated its capabilities by successfully passing numerous law school exams and even bar examinations—a feat that just a few years prior, experts would have deemed nearly impossible for AI.²³

²¹ See OpenAI, “[GPT-4 Technical Report](#)” (4 March 2024), online: <arxiv.org> [perma.cc/C7FW-856R].

²² Holly Else, “[Abstracts Written by ChatGPT Fool Scientists](#)” (12 January 2023), online: <nature.com> [perma.cc/WW39-9L3L].

²³ Pablo Arredondo, “[GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession](#)” (19 April 2023), online (blog): <law.stanford.edu> [perma.cc/B6D2-UEA4].

Surden has noted that LLMs like GPT-4 have shown extraordinary capabilities in the legal field, accomplishing tasks that were once thought to be nearly impossible just a few years ago.²⁴ Specifically, Surden highlights GPT-4's ability to engage in legal reasoning about laws and facts; however, clear and serious limitations exist in this area, as evidenced by its occasional production of inaccurate or fabricated information, commonly referred to as "hallucinations."²⁵ Nonetheless, GPT-4 has demonstrated impressive skills in analyzing and generating contracts, summarizing legal cases, drafting patents, writing legal motions, and answering questions about legal opinions and documents.²⁶

b) LLM in Law

In the legal field, LLMs are trained on extensive corpora that include a broad spectrum of legal texts, such as statutes, case law, and various legal documents. This training enables them to respond accurately to user prompts by adeptly producing text and documents that resemble those written by legal professionals, such as contracts, pleadings, and memoranda. Moreover, these models can further tailor the drafted documents to meet the specific and distinct requirements of different courts or jurisdictions, or to comply with particular legal standards.

The versatility of LLMs in processing textual information significantly enhances their utility in legal research, an inherently labour-intensive component of legal practice. In particular, LLMs are proficient at reviewing and summarizing complex legal documents. They can rapidly sift through extensive legal documents, efficiently identifying relevant information within a vast volume of legal texts such as case law, statutes, and secondary sources. For instance, instead of manually reading a 100-page Supreme Court of Canada decision to extract the justices' opinions on a specific legal principle, an LLM tool (when prompted) can quickly scan the decision, accurately identifying and summarizing the pertinent opinions.²⁷ This process can be completed in a fraction of the time it would take a lawyer

²⁴ Surden, "ChatGPT", *supra* note 8 at 1951.

²⁵ While responses generated by LLMs are typically relevant to the input prompt, they might not always be accurate due to a phenomenon known as "hallucination." In the context of LLMs, hallucination refers to the model generating information that is plausible but factually incorrect or not supported by the data it was trained on. This can occur because the model's responses are based on patterns it has learned from the training data, rather than by accessing or verifying real-time, factual information. See Eliza Mik, "Caveat Lector: Large Language Models in Legal Practice" The Chinese University of Hong Kong Faculty of Law Research Paper No. 2024-04 at 35 [Mik].

²⁶ *Ibid.* Note: At the time of editing this paper, OpenAI released GPT-5, a more advanced version of the tool.

²⁷ See e.g. "ChatPDF", online: <chatpdf.com> [ChatPDF].

to perform the same task. Such capabilities not only expedite access to essential information but also uncover important insights that might have otherwise been overlooked. Ultimately, LLMs facilitate a more streamlined and effective legal research process, enabling legal professionals to concentrate on essential analytical and strategic tasks.

This paper previously noted the ability of LLMs to effectively generate plausible texts by leveraging probabilistic methods that predict sequences of words with high accuracy. This trait, which I will refer to as “stochastic proficiency,” paradoxically, is also a source of one of their primary limitations—hallucinations. While stochastic proficiency allows LLMs to randomly generate plausible and coherent texts that are obviously credible to the reader, this generated information might not be accurate.²⁸ Ostensibly credible information can then become suspect.²⁹

In legal research, for example, when prompted, LLMs trained on extensive case law can generate what appears to be coherent and plausible legal principle and case law. However, this generated case law may be entirely fictitious and nonexistent, created by the model’s ability to predict words statistically based on actual case law and legal information it had reviewed during training. Therefore, while the legal principles articulated in the LLM-generated case law may be accurate reflections of established law—as derived from the training data encompassing case law, statutes, and secondary legal materials—they are not based on actual cases that came before the court. Instead, they are fabricated by the model through its probabilistic text generation.

3. Uses of Generative AI in the Legal Profession

The rise of generative AI has drawn attention to the use of AI more generally in the legal profession, where various AI technologies have been used for some time. For example, AI tools such as predictive coding have long been deployed in litigation document review and contract analysis.³⁰ Additionally, AI has been deployed in legal research and writing, litigation risk prediction, and legal chatbots.³¹ Generative AI tools have recently emerged to enhance performance in these areas and expand the use of AI technology into many other domains within the legal field. Below, I will discuss some of the current applications of generative AI in the legal profession.

²⁸ Ziwei Ji et al, “Survey of Hallucination in Natural Language Generation” (2023), 55:12 ACM Computing Surveys, Article No 248, p 1– 38 at 4.

²⁹ See Mik, *supra* note 25 at 23.

³⁰ Christian, “Predictive Coding”, *supra* note 3 at 498.

³¹ Noonan, *supra* note 18 at 9.

i) Legal Research

Professional rules explicitly list legal research skills as an essential aspect of a lawyer's duty of competence.³² As such, it is integral to the practice of law. Effective legal research is crucial in identifying and solving legal issues, and in drafting legal documents as well. Nonetheless, legal research is time consuming as it involves identifying issues in legal matters and searching through vast amounts of materials—including statutes, case law, secondary legal sources, and sometimes non-legal information—to identify information relevant to a case. This process often requires lawyers to sift through multiple legal and non-legal databases, a task that can be both lengthy and time-consuming.

Once potentially relevant documents are found, such as caselaw or research papers, lawyers must then read through these materials to determine their actual relevance to the task at hand. Unfortunately, much of the material identified during this initial search turns out to be non-relevant, leading to considerable time lost on unproductive activities. Despite this inefficiency, clients are typically billed for all time spent on these tasks, including review of materials that are ultimately not relevant to the particular case.

Furthermore, even when the research uncovers relevant materials, the critical information may be buried in a small section of a much larger document. This means that legal professionals may need to review the entire document or a substantial portion of it to identify the relevant sections. This makes legal research demanding, not only in terms of finding potentially relevant materials, but also in reviewing extensive amounts of information before even beginning the legal drafting process.

Generative AI is also valuable within legal research for its language translation capability. This feature is particularly useful for lawyers practising in multilingual jurisdictions, such as Canada. For instance, an English-speaking lawyer may need to review a court decision from a Québec court that is only available in French. Without proficiency in French, the lawyer's ability to understand and analyze the case is limited considerably. Generative AI tools can bridge this language gap by translating the case into the lawyer's preferred language,³³ enabling them to review and work with the case law regardless of the original language in which it was written.

³² See e.g. Law Society of Ontario, *Rules of Professional Conduct* (Toronto: Law Society of Ontario, 2022) ch 3.1 [LSO RPC]; Law Society of Alberta, *Code of Conduct* (Calgary: Law Society of Alberta, 2024) ch 3.1 [LSA CPC].

³³ ChatPDF, *supra* note 27.

Generative AI tools are therefore proving to be highly beneficial in legal research. These tools can efficiently search through multiple databases and information sources to pinpoint potentially relevant materials, far surpassing what a lawyer could manually achieve. Moreover, they can review these materials to confirm their relevance and even identify specific parts or sections where pertinent information is located. By leveraging generative AI, legal professionals can review a much larger corpus of materials more effectively. These tools not only extract information relevant to the lawyer's needs but also accomplish this in a fraction of the time a human would require for this work, generating meaningful time savings that are beneficial to both the lawyer and the client. This, in turn, streamlines the research process and reduces time spent on materials that have nothing to offer to the case.³⁴

ii) Legal Drafting/Writing

Effective legal research is a foundational step in producing well-drafted documents, which depend, in turn, on proficient legal drafting skills.³⁵ Lawyers frequently draft wills, contracts, pleadings, legal memos, and other documents that must usually adhere to specific legal and procedural rules dictating everything from the wording to the formatting and overall appearance. Generative AI tools can significantly enhance the efficiency of legal drafting for lawyers by assisting lawyers in drafting original documents or reformatting initial drafts to meet specific requirements.

Generative AI tools can assist in the proofreading and editing aspects of legal drafting by identifying grammatical and spelling errors and inconsistencies and ensuring adherence to legal standards. They can also be used to prepare initial drafts of documents, which lawyers can then review and refine for accuracy,³⁶ such as demand letters, lease agreements, or contracts. This allows lawyers to focus on refining and tailoring these drafts to their specific needs, rather than starting from scratch, which could be more difficult and time consuming.

Additionally, these tools can restructure or redraft documents and adapt the tone to suit various contexts, ensuring professionalism and clarity. To demonstrate this capability, consider the example below where I present a portion of a letter written by a lawyer to a judge in an unprofessional tone, followed by a revised version created by ChatGPT.

³⁴ Noonan, *supra* note 18 at 10.

³⁵ LSO RPC, *supra* note 32 at ch 3.1; LSA CPC, *supra* note 32 at ch 3.1.

³⁶ Noonan, *supra* note 18 at 15.

Sir, I have just left the Court. Just a few minutes ago, as you hid behind your status like a coward, you made comments about me that were both unjust and unjustified, scattering them here and there in a decision the good faith of which will most likely be argued before our Court of Appeal.³⁷

I then prompted ChatGPT to rewrite the letter in a professional tone, with this instruction/prompt: “*Redraft the text above in an ethical and professional tone.*” This was the result:

Dear Sir,

I have just departed from the courtroom. A short while ago, during your remarks, you made several comments about me that I believe were neither justified nor made in good faith. I feel these remarks may merit further discussion and possibly review by our Court of Appeal.

By leveraging generative AI tools, it is clear that legal professionals can optimize the legal drafting and editing process. They not only reduce the likelihood of errors but also ensure documents adhere to high professional standards. Ultimately, this leads to enhanced productivity and improved service delivery to legal clients.

iii) eDiscovery Document Review

Parties to litigation have legal and ethical obligations to disclose and produce documents relevant to the litigation to the opposing parties.³⁸ eDiscovery is thus the process of identifying, preserving, and collecting electronic documents for the purpose of fulfilling a party’s discovery obligation.³⁹ However, the most taxing aspect of eDiscovery is the review and disclosure of large volumes of electronic documents, given the exponential growth of such documents. In large litigation cases, eDiscovery is the most time-consuming and expensive aspect of the litigation.⁴⁰

Before the popularization of generative AI, AI-based technologies such as predictive coding (built on machine learning technology) have been used to automate parts of the eDiscovery process, especially document review. Predictive coding involves training an AI model on a sample set of documents to predict the relevance of documents in a larger database,

³⁷ See *Doré v Barreau du Québec*, 2012 SCC 12 at para 10.

³⁸ See e.g. *Federal Courts Rules*, SOR/98-106, r 222–233; *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30; *Alberta Rules of Court*, Alta Reg 124/2010, r 5.5.

³⁹ Gideon Christian, “Ethical and Legal Issues in E-Discovery of Facebook Evidence in Civil Litigation” (2017) 15:2 CJLT 335 at 339.

⁴⁰ Christian, “Predictive Coding”, *supra* note 3 at 522.

thereby honing the review process.⁴¹ Generative AI, however, offers further advancements in this field, since it excels in textual analysis and pattern recognition in large datasets, making the automated document review process more efficient and accurate. The technology can identify patterns and key pieces of information, such as communications between parties, witnesses, or other principal players in the litigation. These capabilities help in identifying crucial documents, or “smoking gun” evidence, and could assist counsel in developing litigation strategies.⁴²

The integration of generative AI in eDiscovery is a relatively new and emerging development. However, its impact on the legal profession will be profound, setting new standards for litigation practice. As the technology continues to evolve, it promises a transformative approach to efficient and cost-effective review and processing of large volumes of legal information in complex litigation.

iv) Automated Chatbots

A chatbot is an AI-powered virtual tool⁴³ designed to enable human-machine interaction by using text or voice communication. It performs tasks ranging from responding to simple queries to completing complex functions. Users can leverage and fine-tune effective prompts to improve the chatbot’s task performance over time.

In the legal profession, chatbots can serve as virtual legal assistants—for example, guiding non-lawyers in navigating certain aspects of the legal process such as commencing legal actions in court.⁴⁴ Law firms use chatbots to automate client intake and screening processes by collecting prospective client information, conducting a preliminary screening, assessing the client needs, and then matching them with the right lawyer, based on the complexity and nature of their case. This automation accelerates the intake and consultation processes, allowing lawyers and their staff to concentrate on tasks that require essential human expertise.

Further, chatbots could be used to automate round-the-clock client support on law firms’ websites, addressing general legal inquiries from the public. They can also be used to offer legal advice to clients, although this use poses ethical challenges related to the unauthorized practice of law. Additionally, a legal risk stems from potential inaccuracies in the chatbot’s

⁴¹ *Ibid* at 497.

⁴² Noonan, *supra* note 18 at 12.

⁴³ Not all chatbots are AI-powered. Rule-based chatbots operate on predetermined or programmed rules to carry out simple instructions for which they have been programmed.

⁴⁴ Noonan, *supra* note 18 at 13. A good example is DoNotPay.com.

recommended courses of action, which could expose the lawyer to liability for any wrongful advice provided by the chatbot.⁴⁵ Thus, lawyers must exercise caution when employing chatbots to provide legal advice. Relying on any AI technology in the provision of legal advice to client, without professional oversight or verification, poses important legal and ethical risks.

Overall, legal chatbots offer innovative ways that really do boost efficiency and accessibility in the provision of legal services by lawyers. They automate routine tasks such as client intake, delivering legal information, and assisting individuals in navigating legal procedures independently. This not only enhances productivity for lawyers but also reduces operational costs, making legal services more accessible and affordable for firms' clients and for the general public.

4. Issues With the Use of Generative AI in the Legal Profession

The deployment of generative AI tools in the legal profession presents significant challenges alongside the benefits described above. As legal professionals progressively adopt these tools in various aspects of their practice—from legal research to legal drafting—several concerning issues have emerged. These issues are concerning because they could undermine the integrity of the profession and legal processes, and diminish the public trust traditionally placed in the system. The issues range from the accuracy and reliability of AI-generated content, potential breaches of confidentiality, and the propagation of biases, to broader implications for accountability and ethical practices within the profession, and even the unauthorized practice of law. This dynamic shift calls for a critical assessment and adaptation of legal standards and practices to ensure that the integration of AI into law serves to enhance rather than undermine the foundational principles of the legal profession.

i) Hallucination

One of the most pressing concerns surrounding the integration of generative AI into the legal profession is the issue of AI 'hallucinations'—a phenomenon where a large language model produces text that appears highly plausible on the surface but is in fact false or entirely fabricated by the system. According to Mik, the term is now widely synonymous with “false, incorrect, or outright nonsensical statements generated by language models.”⁴⁶ This phenomenon is particularly prevalent in LLMs

⁴⁵ *Moffatt v Air Canada*, 2024 BCCRT 149.

⁴⁶ Mik, *supra* note 25 at 24.

that generate textual output based on patterns learned from vast datasets. This issue is even more problematic because the tool can convincingly mask the inaccuracies in its outputs, presenting them as if they were accurate. This factual misrepresentation can lead to serious challenges in discerning the accuracy of the generated contents, which is a key challenge with generative AI.⁴⁷ Notably, hallucinations in generative AI tools can arise from several factors.

First, hallucination may stem from deficiencies in the training data used to train the tool. If the training data is biased, contains errors, or is incomplete, the AI's outputs will likely reflect these inherent flaws.⁴⁸ Closely related to this is the fact that generative AI tools are trained on vast amounts of data, which, in the context of law, may include laws, case law, and legal information from a variety of legal jurisdictions. However, information from these diverse legal jurisdictions might not be proportionately represented in the training data. As a result, the AI may produce responses that conflate legal principles across jurisdictions, misattribute doctrines, or generate legal content that appears plausible but lacks any basis in the law of the relevant jurisdiction.

Also, while some legal jurisdictions share certain identical or similar legal principles, such as those under common law, notable differences also exist across legal systems. Consequently, generative AI tools trained on data commingled from various legal jurisdictions risk producing responses to a query specific to one jurisdiction that may, in fact, blend laws and legal information from different jurisdictions. While such responses may appear plausible, they may not accurately reflect the state of the law or the specific legal principles applicable in the target jurisdiction. This highlights the need for caution when using generative AI tools for legal research and advice in specific jurisdictional contexts.

Second, in the case of generative AI models like LLMs, their generation of textual output is driven by statistical probabilities derived from the training data, or from stochastic proficiency—the capacity to accurately predict meaningful word sequences, as I noted earlier. These models do not possess an understanding of the data in the human sense; instead, they identify patterns within the data and make predictions based on these identified statistical correlations. Consequently, while the output may seem logical and plausible within the framework of these correlations, it may not necessarily be factually accurate or true.

⁴⁷ Noonan, *supra* note 18 at 24.

⁴⁸ *Ibid*; Colleen Chien et al, “[How Generative AI Can Help Address the Access to Justice Gap Through the Courts](#)” (30 January 2024) at 7, online: <ssrn.com/abstract=4683309> [perma.cc/CXV4-V6SS] [Chien et al].

a) Professional Responsibility Risks Arising from AI Hallucinations

AI-generated hallucinated legal content engages a lawyer's core professional obligations, particularly the duties of competence⁴⁹ and candour⁵⁰. While the ethical duty of competence obligates a lawyer to perform legal services to the standard of a competent lawyer, the duty of candour imposes an obligation to ensure that documents filed by lawyers in the representation of their clients are accurate and truthful.

High standards of accuracy and factual correctness are the bedrock of the legal profession. As such, undetected AI hallucinations can result in erroneous legal advice and, in some cases, lead to unjust outcomes within the judicial process.⁵¹ This concern is growing increasingly serious, especially given the rising number of reported incidents in which lawyers have submitted fictitious or non-existent case law in court filings while representing clients.⁵²

The first such case was *Mata v Avianca, Inc*⁵³ In *Mata*, the lawyers representing the plaintiff in a litigation before the US District Court for the Southern District of New York used ChatGPT for their legal research. The AI tool's hallucinations produced a fabricated and nonexistent legal case, which the lawyers included in their court submission. This not only resulted in sanctions against the lawyers but also generated viral media coverage. This incident served as a wake-up call for courts in various jurisdictions, prompting them to issue directives or guidelines for the use of AI tools in the preparation of documents submitted in legal proceedings.⁵⁴

⁴⁹ LSO RPC & LSA CPC, *supra* note 32.

⁵⁰ *Ibid.*

⁵¹ Noonan, *supra* note 18 at 25.

⁵² See Damien Charlotin "[AI Hallucination Cases](#)" (2025), online: <www.damiencharlotin.com>[/hallucinations/]; *Ko v Li*, 2025 ONSC 2965; *R v Chand*, 2025 ONCJ 282 [*Chand*], Chien et al, *supra* note 48.

⁵³ *Mata v Avianca, Inc*, 678 F Supp (3d) 443 (SDNY 2023).

⁵⁴ See e.g. Alberta Courts, "[Notice to the Public and Legal Profession: Ensuring the Integrity of Court Submissions When Using Large Language Models](#)" (6 October 2023), online: <albertacourts.ca> [perma.cc/X3F4-AZJE] [Alberta Courts]; Supreme Court of Yukon, "[Practice Direction General-29: Use of Artificial Intelligence Tool](#)" (26 June 2023), online: <yukoncourts.ca> [perma.cc/87CQ-56SQ] [Supreme Court of Yukon]; Orange County Superior Court, "[Dept. C31 Standing Order Re: Artificial Intelligence](#)" (25 January 2024), online: <occourts.org> [perma.cc/H3TH-QSHC]; State of Connecticut Judicial Branch, "[JBAPP Policy 1013 Artificial Intelligence Responsible Use Framework](#)" (1 February 2024), online (pdf): <jud.ct.gov> [faq/CTJBResponsibleAIPolicyFramework2.1.24.pdf]; New Jersey Courts, "[Notice to the Bar - Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers](#)" (24 January 2024), online: <njcourts.gov> [perma.cc/IE4Q-US2R].

Presenting a fictitious case to a court whether deliberately generated by human or inadvertently generated by AI is tantamount to making a false statement to the court. As the court in *Zhang v Chen*⁵⁵ has shown, this is a serious breach of integrity and the lawyer's duty of candour. In *Zhang*, the lawyer's use of ChatGPT for legal research led to the submission of bogus case law to the court. Highlighting the seriousness of the lawyer's conduct (or misconduct), Justice Masuhara warned that "[c]iting fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice."⁵⁶ The conduct in *Zhang* resulted in sanction against the lawyer and a formal caution by the court. This underscores the professional responsibility of lawyers to independently verify any AI-generated research or content before relying on it or submitting it to the court.

The professional duty of technological competence now expressly includes an obligation to understand both the benefits and risks of relevant technologies.⁵⁷ Accordingly, a lawyer's failure to detect an AI-generated hallucination may constitute a lapse in professional competence, potentially exposing them to judicial sanctions, regulatory discipline, or professional liability.

In the two cases referenced above, it took the vigilance of competent opposing counsel to detect the bogus cases. In other instances, it has been the competence of the presiding judge that brought such errors to light.⁵⁸ Mik has noted that the ability to detect AI hallucinated cases may be highly dependent on user competence.⁵⁹

While the professional duty of competence applies to lawyers, it does not apply to non-lawyer self-represented litigants.⁶⁰ Although it might be easier for a competent lawyer to identify AI hallucinated cases generated in the course of their AI-assisted legal research, this may not be the case for a self-represented litigant without legal training.

Many self-represented litigants are now increasingly resorting to the use of generative AI tools in legal proceedings. This places an added layer of professional responsibility on the lawyers involved in these proceedings. Lawyers have an ethical duty to ensure the administration of justice. This ethical duty may now extend to an obligation to carefully review

⁵⁵ *Zhang v Chen*, 2024 BCSC 285.

⁵⁶ *Ibid* at para 29.

⁵⁷ See LSO RPC *supra* note 32; LSA CPC, *supra* note 32.

⁵⁸ *Chand*, *supra* note 52.

⁵⁹ Mik, *supra* note 25 at 30.

⁶⁰ The Rules of Court though will apply to the self-represented litigants.

submissions from self-represented parties, ensuring they do not contain factually inaccurate or fabricated content generated by AI hallucinations, errors that could mislead the court thus adversely affect the outcome of the proceeding.

While the adoption of generative AI tools in legal practice holds significant promise, their outputs must be approached with caution. These tools generate content not from legal reasoning but from statistical patterns in language, which means their results may lack both factual accuracy and legal reliability. Accordingly, lawyers must rigorously scrutinize any AI-generated content before incorporating it into court submissions. The duty of candour and the obligation to uphold the integrity of the judicial process require that all materials filed with the court be accurate and truthful. As such, legal professionals bear an ethical and professional responsibility to independently verify the content of all documents, especially those informed by AI, before submitting them in the course of legal proceedings.⁶¹

ii) Confidentiality

The duty of confidentiality is fundamental to the lawyer-client relationship. It is essential to client trust and candid communication. This duty obligates lawyers to hold in strict confidence all information acquired in the course of this relationship, particularly information disclosed for the purpose of seeking or receiving legal advice or services.⁶² Such information must not be disclosed to third parties, except in very limited circumstances allowed by law or by the rules of professional conduct.⁶³

Importantly, the use generative AI in the legal profession can lead to the inadvertent disclosure of confidential information and could put this duty at grave risk. This is particularly true for general-purpose generative AI tools like ChatGPT, which are not specifically designed for legal professionals. These tools typically require users to input information or queries through prompts—instructions given to the generative AI tool to process information and generate the desired output. In other cases, they may require the user to upload documents into the system and then provide prompts that instruct the tool on how to process the information contained in those documents.

⁶¹ *Hussein v Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1060 at para 39 [*Hussein*].

⁶² See e.g. LSO RPC, *supra* note 32; LSA CPC, *supra* note 32.

⁶³ *Descôteaux et al v Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860; *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7; *Law Society of Saskatchewan v Merchant*, 2008 SKCA 128, leave to appeal to SCC refused, 32916 (2 April 2009).

Hence, a lawyer using generative AI tools for research will need to input information into the system. When a lawyer inputs confidential client information into such a system, that data may be stored, analyzed, or even used to further train the AI model. In effect, the lawyer could be disclosing client confidences to a third-party AI provider, potentially without the client's knowledge or consent. If this information is confidential, it may lead to a breach of their duty of confidentiality. For instance, a lawyer drafting a will using generative AI might need to enter personal and confidential information about the client—their name, assets, financial information, beneficiaries, and so forth. The tool uses this information to generate the draft will. However, particularly with general-purpose or open-source generative AI tools, once confidential information is entered into the system, it may be integrated into the tool's extensive database.⁶⁴ Consequently, the lawyer may lose control over this confidential information, including the ability to delete or modify it. This will also apply to documents uploaded into the system. This blending of confidential information with other information in the generative AI system highlights additional risks in maintaining confidentiality and data security.

Additionally, information input into generative AI tools is typically retained by the system and used for further internal training. This practice can lead to the unauthorized disclosure of confidential information, as the system may generate responses to other users' prompts that inadvertently include or are influenced by previously entered confidential information. Essentially, the information is stored and could be shared in some modified form with other users.

A high-profile incident illustrates these concerns.⁶⁵ In 2023, Samsung experienced an accidental leak of its sensitive internal source code when an engineer with the company uploaded proprietary information into ChatGPT for work-related purposes. This action led to the internal code being inadvertently disclosed in the responses ChatGPT provided to other users in unrelated queries. In response, Samsung promptly banned employee use of the tool, citing concerns about the inability to retrieve or

⁶⁴ Lauren Leffer, "[Your Personal Information Is Probably Being Used to Train Generative AI Models](https://tinyurl.com/a9m4arth)" (19 Oct 2023), online: <<https://tinyurl.com/a9m4arth>>.

⁶⁵ Siladitya Ray, "[Samsung Bans ChatGPT Among Employees After Sensitive Code Leak](https://www.forbes.com)", *Forbes* (2 May 2023), online: <[forbes.com](https://www.forbes.com)> [perma.cc/XSR8-DUCU]. In a related incident, Amazon prohibited its employees from uploading the company's confidential information or code into ChatGPT after noticing that some of ChatGPT's responses to prompts bore a striking resemblance to its internal data (see Aaron Mok, "[Amazon, Apple, and 12 other major companies that have restricted employees from using ChatGPT](https://www.businessinsider.com)", *Business Insider* (11 July 2023), online: <[businessinsider.com](https://www.businessinsider.com)> [perma.cc/EW3K-MRMY]).

delete sensitive information entered into the system, and the risk that such information could be accessed or disclosed by others.

The Samsung scenario is very relevant to law practice: if a lawyer's confidential client information becomes mingled into an AI's training data, another user down the line might receive a response that inadvertently reveals that confidential information. Aside from such direct leaks, AI providers themselves at the backend of the system may access user inputs, whether for model improvement or debugging, meaning client information could be seen by the tools programmers.

Even when access by other users or developers might not necessarily result in material damage to the client, recognizing that the legal profession's duty of confidentiality is not *solely* designed to protect clients against such damage remains pivotal. Significantly, it also aims to safeguard all clients' related interests against disclosure of their confidential information, regardless of any potential harms. Maintaining the confidentiality of such information is essential for trusting lawyer-client relationships, ensuring that clients can provide comprehensive and candid information necessary for effective legal advice and representation.

Thus, lawyers must be well-informed about the privacy and confidentiality risks associated with using generative AI tools that lack confidentiality safeguards to avoid breaching their professional duty of confidentiality. This does not mean precluding the use of these tools altogether; rather, with general-purpose generative AI tools like ChatGPT that serve a broad range of applications and users and lack tailored protective measures, legal professionals must exercise additional caution to ensure confidentiality is maintained.

While using these general-purpose AI tools, lawyers must not share or upload confidential information. Any information input into the system should be carefully redacted, anonymized or sanitized of client confidential information unless the client has explicitly consented to its use after being fully informed of the implications. For example, to prepare a draft will with such a tool, a lawyer might substitute the client's actual name with a fictitious one. Similar precautions should be taken with other confidential information such as the names of beneficiaries, financial information, and addresses of the client's properties. These measures will ensure that no identifiable confidential information is entered into the AI system that could compromise client confidentiality.

Some generative AI tools are, however, specifically designed for use by legal professionals, incorporating robust measures to uphold the

lawyer's duty of confidentiality.⁶⁶ These specialized tools allow lawyers to control the information entered into the system, including capabilities for deleting confidential information after use and restricting access to unauthorized parties, including the tools' developers. When procuring such tools, lawyers must verify the level of confidentiality protection the tools offer. They must also ensure that the design and features of the tools they intend to use align with their professional obligations, safeguarding client confidentiality.

Lawyers must approach general purpose AI tools with the same caution as any third-party service handling client information. In some jurisdictions, a stricter obligation has been imposed on lawyers using third party services like internet-based services in the provision of legal services. For example, Rule 5.3 of the ABA Model Code of Professional Conduct outlines the responsibility of lawyers regarding the use of third-party, non-lawyers in the provision of legal services.⁶⁷ To this effect, Comment 3 to that rule is particularly instructive. The comment deals specifically with "using an Internet-based service to store client information." It provides that "a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations." This guideline could be broadened to cover the uploading of client information into generative AI systems, which are powered by the internet and may inevitably store client information.

Perlman has noted that lawyers who adopt generative AI can satisfy this confidentiality obligation by making reasonable efforts to ensure that third parties, such as the service provider, developer, or vendor, do not have access to the prompts nor use the information entered into the system to train their models.⁶⁸

Thus, the duty of confidentiality intersects with the duty of competence (discussed below). The Rules of Professional Conduct imposes an obligation on lawyers to "understand the benefits and risks associated with relevant technology, *recognizing the lawyer's duty to protect confidential information*."⁶⁹ To protect client confidential information in an AI-driven information processing environment, a lawyer will need to understand how the tool processes client data. This knowledge or competence may

⁶⁶ Examples include Harvey AI, Lexis+ AI, CoCounsel AI, etc.

⁶⁷ American Bar Association, "[Model Rules of Professional Conduct—Rule 5.3: Responsibilities Regarding Nonlawyer Assistance](#)" (2024), online: <americanbar.org> [perma.cc/ 2JYH-WVHB].

⁶⁸ Andrew M Perlman, "[The Legal Ethics of Generative AI](#)", Suffolk U L Rev [forthcoming] at 5, online: <ssrn.com/abstract=4735389> [perma.cc/X5L8-FTAX].

⁶⁹ Federation of Law Societies of Canada, "[Model Code of Professional Conduct](#)" (April 2024) at ch 3.1-2, online: <flsc.ca> [perma.cc/RR34-9B2C] [Emphasis supplied].

require the lawyer to confirm what safeguards are in place with the technology developer or vendor, and to incorporate those protections into the service agreement.

In employing these tools, lawyers must balance the competing interests of providing efficient and cost-effective legal services with the need to protect client confidences. Maintaining the integrity of the legal profession and the justice system demands that information shared in the course of the lawyer-client relationship be vigorously protected, even in the age of generative AI. This careful handling of confidential information helps maintain the trust that is fundamental to the lawyer-client relationship, while also embracing the benefits of modern technology.

iii) Professional Responsibility and Liability

As has been previously noted, the outputs generated by AI tools, while sophisticated, may not always meet the standards of factual accuracy or ethical standard expected in legal practice. This issue is especially pronounced when using general-purpose AI tools that are not specifically designed for legal professionals.⁷⁰ This can lead to breaches of a lawyer's professional responsibilities and may result in legal liability, including malpractice litigation initiated by disgruntled clients.

When AI-generated content, particularly inaccurate information, contributes to a client's loss in a legal matter, the issue of professional and legal responsibility arises. The question of who bears legal responsibility for such errors—whether the lawyer using the tool or the developer who created it—is complex. This is especially challenging given that many AI systems function as “black boxes,” with decision-making processes that are opaque and difficult for users to interpret. This lack of transparency not only impedes a clear understanding of how the technology works but also complicates the allocation of legal responsibility when errors occur.

By contrast, determining a lawyer's professional responsibility in such cases is more straightforward. The use of generative AI in legal practice does not relieve lawyers of their professional obligations; on the contrary, it heightens those obligations and raises the applicable standard of care. Accordingly, where inaccurate AI-generated information is relied upon, the lawyer remains professionally accountable and may be liable to the client for any resulting harm. Disciplinary consequences may also follow.

⁷⁰ Even generative AI tools designed for the legal profession have been shown to generate erroneous responses to queries. See Benjamin Perrin, “[Law professor gives Lexis+ AI a failing grade](#)”, (12 November 2024), online: <nationalmagazine.ca> [perma.cc/VMG5-SYLW].

In *Hussein*⁷¹, the court considered imposing personal costs on counsel after the lawyer's use of a generative AI tool resulted in the submission of inaccurate and fictitious information during the course of representing a client in legal proceedings.⁷²

It is critical to recognize that lawyers are held to a much higher standard by the legal profession than AI tool developers and vendors are by their regulatory bodies—if such bodies even exist. While legal AI developers may contractually disclaim liability through their terms of use, lawyers cannot contract out of their professional responsibilities.⁷³

Lawyers are expected to adhere to a professional standard that encompasses competency, diligence, and the protection of client interests. Thus, when using AI tools, lawyers must ensure that these standards are maintained, which often necessitates a higher level of oversight. The US case of *Symbionics v. Ortlieb*⁷⁴ shows that a lawyer bears the ultimate responsibility for errors made by tech tools used by the lawyer in the provision of legal services. In *Symbionics*, a lawyer sought relief from the court after missing a filing deadline due to an error in the functionality of the lawyer's computer calendaring system. The court declined to grant the relief, holding the lawyer accountable for failing to exercise proper oversight of the technological tool.⁷⁵

Symbionics reinforces the principle that lawyers have a duty to exercise oversight over the outputs generated by the technological tools they use in their practice. This obligation parallels the rules of professional conduct requiring lawyers to supervise the work of non-lawyers under their direction.⁷⁶ Under these rules, lawyers are held accountable for legal work performed by staff acting on their behalf. Although AI tools are not human and cannot be classified as employees⁷⁷, the underlying rationale for supervision remains applicable. In particular, the professional obligation to supervise tasks performed by individuals using human intelligence can reasonably extend to the oversight of tasks performed by machines using artificial intelligence at the direction of the lawyer. Hence, maintaining “human-in-the-loop” oversight is imperative whenever AI tools are used in legal practice.

⁷¹ *Hussein*, *supra* note 61.

⁷² *Ibid* at 43.

⁷³ Re AL, 2003 ABQB 905 at para 6.

⁷⁴ See *Symbionics v Ortlieb*, 432 F App'x 216, 219–20 (4th Cir 2011).

⁷⁵ *Ibid* at 10.

⁷⁶ See e.g. LSO RPC, *supra* note 32 at 6.1; LSA CPC, *supra* note 32 at 6.1.

⁷⁷ Samuel D Hodge Jr., “Revolutionizing Justice: Unleashing the Power of Artificial Intelligence” (2023) 26:2 SMU Sci & Tech L Rev 217 at 245 [Hodge Jr].

It remains imperative for lawyers who deploy AI technologies to conduct thorough due diligence on any AI tools they plan to use, to fully understand their capabilities and limitations.⁷⁸ They must also undertake adequate training and adequate supervisory oversight over AI-generated outputs. Additionally, staying informed about the evolving capabilities of AI tools and related implications for their specific area of legal practice is imperative.

This proactive approach is essential for lawyers to integrate AI tools into their practice responsibly. It ensures alignment with their professional responsibilities and effective management of any potential risks associated with the use of such technologies. By adopting this careful and informed strategy, lawyers will safeguard their clients' interests, uphold the integrity of the legal profession, and ensure that these technologies support, rather than undermine, the delivery of high-quality legal services.

iv) Bias

Bias is a clear challenge associated with outputs from AI tools, including generative AI. In the legal context, bias often refers to differential treatment or outcomes based on specific protected grounds, such as race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.⁷⁹ In the context of AI tools, bias encompasses numerous and diverse factors that can adversely affect outcomes, including flaws in design and data. A primary source of bias in AI systems is the training data. If the data used to train an AI tool contain biases, whether conscious or unconscious, these biases will likely be reflected in the tool's outputs.

Bias in AI systems has been well-documented across various sectors where AI tools are deployed, including the justice system.⁸⁰ In this context, AI bias has been particularly evident in AI applications in predictive policing,⁸¹ recidivism risk assessments,⁸² and facial recognition

⁷⁸ However, this might require technical expertise beyond the capability of the lawyer. Hence, this may be a matter delegated to a law firm's IT department or to outside IT consultants who may work under the supervision of the lawyer/law firm to address these challenges.

⁷⁹ *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

⁸⁰ Julia Angwin et al, "[Machine Bias: There's software used across the country to predict future criminals. And it's biased against Blacks](#)" (23 May 2016), online: <propublica.org> [perma.cc/K5GB-TEMH].

⁸¹ Will Douglas Heaven, "[Predictive policing algorithms are racist. They need to be dismantled](#)" (17 July 2020), online: <technologyreview.com> [perma.cc/6BZL-M6T9].

⁸² Gideon Christian, "Legal Framework for the Use of Artificial Intelligence (AI) Technology in the Canadian Criminal Justice System" (2024) 21:2 CJLT 109.

technology.⁸³ Thus, some researchers have noted that “there is *no such thing as a bias-free algorithm*.”⁸⁴

Since AI tools are trained on large amounts of data, they learn patterns from this data, including any embedded biases, and then replicate these in their outputs. For instance, if the training data are predominantly biased against a specific group or viewpoint, the output from the tool will inevitably reflect this bias, disproportionately affecting that group or viewpoint.⁸⁵ This is not to suggest that all outputs from generative AI tools are inherently biased. Rather, the point is that real possibilities for bias exist in the outputs produced by these technologies. Therefore, legal professionals using AI tools must remember these tools are not objectively neutral, and that bias can manifest in various ways in their outputs. Thus, legal professionals who use AI tools must diligently scrutinize them for any evidence of bias.

Addressing such bias in generative AI tools, particularly those used in the legal profession, is a complex challenge,⁸⁶ one that will require interdisciplinary collaboration involving legal professionals, data scientists, and ethicists.⁸⁷ Each group will bring crucial perspectives and expertise that are collectively necessary for understanding and mitigating the impacts of AI bias in legal settings.

v) Technology Competence

The legal profession is experiencing a technological revolution, with generative AI tools at the forefront of this transformation. Holloway has described this revolution as one of the “forces driving the current wave of change in the legal profession.”⁸⁸ As a profession, we have certainly learned that we cannot escape technological advancement;⁸⁹ indeed, it is important to integrate new technologies within our ranks. However, it can be a major challenge for lawyers to maintain the necessary level of technological competence to use tools like generative AI effectively and ethically. This competence entails that they have the ability to understand and deploy technology tools to enhance their practice.

⁸³ Gideon Christian, “The New Jim Crow - Unmasking Racial Bias in AI Facial Recognition Technology within the Canadian Immigration System”, 2024 69:4 McGill LJ 441.

⁸⁴ James E Baker, Laurie N Hobart & Matthew Mittelsteadt, *An Introduction to Artificial Intelligence for Federal Judges* (Washington: Federal Judicial Center 2023) at 32.

⁸⁵ Noonan, *supra* note 18 at 25.

⁸⁶ *Ibid* at 26.

⁸⁷ *Ibid*.

⁸⁸ Ian Holloway, “A Canadian Law School Curriculum for this Age” (2014) 51:4 *Alta L Rev* 787 at 797 [Holloway].

⁸⁹ Noonan, *supra* note 18 at 36.

Recognizing the importance of this skill, even before generative AI became widely popular, most legal profession regulatory bodies in Canada amended their codes of professional conduct to impose a duty of technology competence on lawyers⁹⁰ to “develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities.”⁹¹ This is part of the broader duty of competence, which demands that lawyers apply appropriate knowledge and skills in legal research, analysis, writing, and drafting, among other areas.⁹²

Does this mean that lawyers have an ethical obligation to be proficient in using generative AI tools? Apparently, yes. Generative AI is a technology highly relevant to many areas of legal practice today, especially in legal research, analysis, writing, and drafting, as I have discussed. Using these tools can greatly enhance the quality, scope, and pace of a lawyer’s work.⁹³ Moreover, the duty to be technologically competent with such tools aligns with a lawyer’s obligation to provide efficient and cost-effective legal services to clients.⁹⁴

Further, judicial pronouncements from the courts increasingly reveal the importance of lawyers’ familiarity with legal technologies, and their ever more frequent use in law practices. In the Ontario case of *Cass v 1410088 Ontario Inc.*,⁹⁵ the judge limited the cost award recoverable by the successful party in the litigation, indicating that had the party’s lawyer used AI tools while preparing for the litigation, the successful party’s costs would have been substantially reduced. Similarly, in *Drummond v The Cadillac Fairview Corp Ltd*,⁹⁶ the court noted that AI technology is “a necessity for the contemporary practice of law,”⁹⁷ which should be encouraged by the court. Thus, lawyers have an obligation to be familiar with and use AI technologies relevant to their area of practice. Clients should not be held responsible for their lawyer’s lack of technological competence, nor should they bear any costs that arise from it in the course of the lawyer’s provision of legal services to the client.⁹⁸

⁹⁰ See e.g. LSO RPC, *supra* note 32 at Rule 3.1-2, commentary 4; LSA CPC, *supra* note 32 at Rule 3.1-2, commentary 5–6.

⁹¹ *Ibid.*

⁹² See LSO RPC, *supra* note 32 at ch 3.1-2; LSA CPC, *supra* note 32 at ch 3.1-2.

⁹³ Hodge Jr, *supra* note 77 at 245.

⁹⁴ LSO RPC *supra* note 32 at Rule 3.2-1; LSA CPC, *supra* note 32 at Rule 3.1-2.

⁹⁵ *Cass v 1410088 Ontario Inc*, 2018 ONSC 6959 at para 34.

⁹⁶ 2018 ONSC 5350.

⁹⁷ *Ibid* at para 10.

⁹⁸ Gideon Christian, “Predictive Coding”, *supra* note 3 at 523.

Therefore, for the legal profession to fully benefit from the technological revolution “driving the current wave of change in the legal profession,”⁹⁹ lawyers and the profession must address this lack of competence. First, our regulatory bodies must keep pace with technological advancements and issue necessary directives to guide lawyers’ use of AI tools in their practice. The lack of regulatory leadership in this area by almost all law societies in Canada was evident in their delays issuing directives or guidelines for the use of generative AI tools.¹⁰⁰ This followed the technology’s sudden surge in capabilities and popularity in the last few years, along with the many high-profile news stories about its use (or misuse) by lawyers.

As I have been arguing, lawyers must take proactive steps to acquire knowledge about legal AI technologies and their use in law practice. Admittedly, lawyers may not always have the technical expertise to fully understand or evaluate these technologies. Thus, continuing legal education in this area is essential, not only to gain a basic knowledge of the technology but also to stay updated with the ever-changing dynamics, tools, and possibilities for AI in the legal field. This may also require collaboration with IT professionals and consultants.

Notwithstanding the suggestions above, I firmly believe that Canadian law schools hold the key to addressing technology competence in the profession.¹⁰¹ Holloway, Canada’s longest-serving law dean, has long highlighted a fundamental issue with legal education in Canada, pointing to the current state of Canadian law school curricula. He noted that Canadian law schools have failed to innovate and address the technological needs of future lawyering, stating the following:

The problem, though, was that the lives of law schools in Canada were increasingly divorced from the realities of everyday working lawyers. The breach was never complete, but less and less did law schools use as their guide for innovation the

⁹⁹ Holloway, *supra* note 88.

¹⁰⁰ The first notice issued by a law society was by the Law Society of British Columbia in July 2023. In its July 2023 E-Brief, the Law Society of BC issued a single paragraph comment on the use of AI-generated materials being used in court proceedings (see Law Society of British Columbia, “[E-Brief: July 2023](#)” (2023 July), online: <lawsociety.bc.ca> [perma.cc/BW7C-9R8T]). The first professional conduct guidance related to the use of generative AI was by the Law Society of Alberta in late 2023 (see Law Society of Alberta, “[The Generative AI Playbook](#)” (last modified January 2024), online: <lawsociety.ab.ca> [perma.cc/DE4Y-79P2] [Law Society of Alberta]).

¹⁰¹ Gideon Christian, “[eLitigation—Training Future Litigators for the Profession They Will Join](#)” (1 December 2020), online (blog): *Ablawg* <ablawg.ca> [perma.cc/JT4J-GFYB] [Christian, “eLitigation”].

extent to which it better prepared their students for the profession they were about to join.¹⁰²

Holloway advocated for the modernization of Canadian law school curricula to adequately equip law students for the legal profession they would join upon graduation. This requires that they design and teach courses specifically focused on helping students acquire the competence to use legal technologies in their law practice.¹⁰³ It may also entail redesigning existing courses to address legal AI technology issues unique to each area of instruction.

For example, courses on legal ethics could be redesigned to include topics on technology competence and ethical issues—such as data security, privacy, and confidentiality—as they pertain to the use of AI tools in legal services. Similarly, legal research and writing courses could be revamped to include substantial instruction on using generative AI in legal research and writing. These types of courses will provide knowledge and training on these specialized areas that they may not encounter during their legal practice. Notably, if students receive this education early in their legal training, they will more naturally develop an interest in legal AI tools, an interest they can build on throughout their legal careers.

The journey towards technology competence is an ongoing one that should begin in law school. It requires a commitment to continuous learning, ethical practice, and proactive management of the risks associated with legal AI technologies, especially generative AI. Law schools must integrate AI technology-focused courses and training into their curricula, so that future lawyers are well-equipped to handle the technological demands of modern legal practice.

Once in practice, lawyers must stay updated with the latest advancements in legal AI technology through continuing legal education and professional development. This commitment to continuous learning helps lawyers understand and effectively use new tools, ensuring they provide the best possible service to their clients.

By embracing their duty of technology competence, lawyers can ethically deploy legal AI tools in their practice, identifying and mitigating risks associated with generative AI tools, such as confidentiality and the accuracy of AI-generated information. This proactive approach helps maintain the integrity and trustworthiness of legal services, ensuring lawyers remain relevant and competitive in a rapidly evolving digital

¹⁰² Holloway, *supra* note 88 at 789.

¹⁰³ Christian, “eLitigation”, *supra* note 101.

world. Ultimately, this enhances their ability to provide legal services effectively and efficiently.

vi) Generative AI and Unauthorized Practice of Law

The increasing integration of generative AI into the legal profession has introduced complex challenges regarding the conventional understanding of the unauthorized practice of law (UPL) and the historical monopoly by lawyers in the provision of legal services.¹⁰⁴ Traditionally, UPL refers to the provision of legal services by entities or individuals who are not duly qualified or licensed under the regulatory framework of the jurisdiction in which the services are provided.¹⁰⁵ The proliferation of sophisticated generative AI tools is set to disrupt these traditional boundaries, necessitating a modified regulatory framework to address the new technological realities.

One core challenge with the framework governing UPL is the absence of a clear definition of what constitutes the “practice of law.”¹⁰⁶ Even where the definition exists, it varies across jurisdictions, resulting in the absence of a global standard.¹⁰⁷ This problem becomes even more pronounced with the emergence of generative AI tools, often developed by non-lawyers and equipped with the capability to tackle complex legal issues previously considered exclusive to human lawyers. These tools can generate sophisticated, human-like outputs, leading to questions about the extent of their permissible use in legal settings without infringing on UPL boundaries. As these AI technologies continue to advance, they will increasingly obscure the lines defining the practice of law. Consequently, a critical question arises: Does the use of generative AI tools, designed by non-lawyers and capable of resolving legal issues, constitute UPL?

This question becomes increasingly significant in view of legal threats and enforcement actions by legal regulatory bodies targeting AI developers for allegedly enabling the unauthorized practice of law. In 2023, the legal tech startup DoNotPay and its founder, Joshua Browder, planned to deploy their AI “Robot Lawyer” in court. This generative AI-powered tool, designed to be worn by the litigant, would listen to court proceedings and provide real-time guidance by dictating oral submissions

¹⁰⁴ Jan L Jacobowitz & Peter R Jarvis, “Unauthorized Practice or Untenable Prohibitions: Refining and Redefining UPL” (2023) 13:2 *St Mary’s LJ Malpractice & Ethics* 283 at 286–287.

¹⁰⁵ *Ibid* at 291.

¹⁰⁶ Susan D Hoppock, “Enforcing Unauthorized Practice of Law Prohibitions: The Emergence of the Private Cause of Action and its Impact on Effective Enforcement” (2007) 20:1 *Geo J Leg Ethics* 719 at 723.

¹⁰⁷ See Thomas E Spahn, “Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law?” (2018) 24:4 *Rich JL & Tech* 1 at 3–14 [Spahn].

and responses to the court's questions for the litigant, to relay to the open court. However, once news of this plan became public, multiple state bar associations in the United States threatened both the startup and Browder with UPL charges, an offence punishable by up to six months in jail in some states. Consequently, the AI-powered "robot lawyer" was immediately decommissioned in response to the threat.¹⁰⁸ This incident clearly demonstrates that regulators will treat AI-delivered legal services by non-lawyers the same as legal services provided by non-lawyers using human effort.

While UPL issues in this context typically arise from the use of generative AI by non-lawyers to deliver legal services, similar concerns can also emerge when lawyers deploy AI tools in ways that circumvent their professional responsibilities—for example, by allowing an AI system to provide legal advice directly to clients without appropriate oversight. This is functionally equivalent to delegating legal advice to an unlicensed human, which is generally prohibited. Professional conduct rules prohibit lawyers from aiding or abetting the unauthorized practice of law¹⁰⁹, and this prohibition applies regardless of whether the agent is a human or a technological tool.

Whether used by a lawyer or non-lawyer, AI tools are increasingly developing capability to perform legal tasks that constitute legal advice or representation, functions that require the judgment of a qualified legal professional.¹¹⁰ This can result in automated legal advice that appears plausible and accurate but is, in fact, incorrect and the product of the tool's hallucination. Such risks highlight concerns about the reliability of generative AI in legal contexts and underscore the need to protect the public—an objective at the core of UPL regulations.

While legal and professional implications are important, a social justice perspective relating to access to justice (and discussed below) also merits consideration, given that generative AI tools could markedly ameliorate the pervasive gaps in access to justice.¹¹¹ This consideration has been invoked in support of the argument for law regulatory bodies to

¹⁰⁸ Bobby Allyn, "[A robot was scheduled to argue in court, then came the jail threats](#)", (25 January 2023), online: <npr.org> [perma.cc/7ERR-BXPS] [Allyn]. Other legal technology companies such as Legal Zoom have also been sued repeatedly for UPL; See also Spahn, *supra* note 107 at 11.

¹⁰⁹ See LSO RPC, *supra* note 32 at Rule 7.6; LSA CPC, *supra* note 32 at Rule 6.1-3.

¹¹⁰ Allyn, *supra* note 108.

¹¹¹ Ed Walters, "Re-Regulating UPL in an Age of AI" (2024) 8:2 Geo L Tech Rev 316 at 328.

relax rules relating to UPL,¹¹² thus enabling the benign use of generative AI to democratize access to legal services. In other words, it could make basic legal services more affordable and accessible to members of the public who lack financial resources.¹¹³

Law societies in Canada have responded to both the threats and opportunities of generative AI by introducing “sandbox” initiatives.¹¹⁴ These initiatives are designed to allow legal and non-legal professionals, such as lawyers and technologists, to develop and deploy legal technologies under a supervised regulatory framework without breaching the rule against UPL. These initiatives provide an ideal controlled environment where new legal technology ideas can be incubated and tested without the full burden of regulatory constraints, to uncover the potential uses of generative AI technologies in the provision of legal services in Canada.

Clearly, addressing the issues related to UPL and generative AI in the legal context are essential. The complex challenge here is how best to do so in ways that both recognize the inherent possibilities of mitigating justice gaps while also preserving the sanctity of providing ethical and effective legal services. As generative AI technologies continue to evolve, sandbox initiatives will play a crucial role in shaping their integration into legal service provision in Canada. These initiatives ensure a balance between fostering innovation, upholding professional integrity, and protecting the public from the risks arising from UPL.

¹¹² Mia Bonardi & Dr L Karl Branting, “Certifying Legal AI Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorized Practice of Law, and AI (2024) 26:1 Colum Sci & Tech L Rev 34 [Bonardi & Branting].

¹¹³ Hodge Jr, *supra* note 77 at 229.

¹¹⁴ See Law Society of Alberta, “[Innovation Sandbox](#)” (last visited 14 February 2025), online: <lawsociety.ab.ca> [perma.cc/S623-ZUAT]; Law Society of British Columbia, “[Innovation Sandbox](#)” (last visited 14 February 2025), online: <lawsociety.bc.ca>; The Law Society of Manitoba, “[Regulatory Sandbox Pilot Program](#)” (last visited 14 February 2025), online: <lawsociety.mb.ca> [perma.cc/S38D-QVNF]; Nova Scotia Barristers’ Society, “[A2J Week: Innovation Sandbox Aims to Improve Access to Justice](#)” (24 October 2023), online: <nbsbs.org> [perma.cc/8SWU-P67D]; Law Society of Ontario, “Access to Innovation” (last visited 14 February 2025), online: <Iso.ca>[/about-Iso/access-to-innovation]; Law Society of Saskatchewan, “[Future of Legal Services Initiative](#)” (last visited 14 February 2025), online: <lawsociety.sk.ca> [perma.cc/K8YV-EFCC].

5. Generative AI, Self-Represented Litigant and Access to Justice

The Law Society of Ontario reports that over 80% of legal matters in Canada are handled by individuals without the assistance of legal professionals.¹¹⁵ Despite ongoing efforts by stakeholders to address access to legal services, this obviously remains a fundamental challenge for many Canadians.¹¹⁶ While the myriad factors contributing to this access-to-justice problem fall outside the scope of this work, generative AI presents a promising avenue for improving such access. Non-lawyered, self-represented litigants are among the most vulnerable parties in the justice system, particularly if they lack the financial resources to hire legal professionals. Certainly, without the professional legal knowledge required to navigate complex legal processes, they often find themselves at a key disadvantage.

By providing cost-effective tools and resources, generative AI tools have the potential to alleviate some of these challenges by providing critical support to self-represented litigants,¹¹⁷ helping them navigate the legal system more efficiently and affordably. These tools can assist with tasks such as conducting legal research, simplifying legal jargon, offering guidance on court filing requirements, and drafting memos or other submissions necessary for their case. By providing these resources, generative AI tools could play a vital role in addressing the systemic access-to-justice issues faced by many individuals.

However, while they may provide valuable assistance to self-represented litigants, they also come with significant challenges. For instance, because self-represented litigants lack formal legal training and are not bound by the ethical rules governing legal professionals, inherent limitations of AI tools—such as hallucinations—become even more concerning. These litigants simply do not have the professional expertise to identify and address these problems. Use of generative AI tools by self-represented litigants thus has the potential to adversely affect the integrity of the court system. This risk is underscored by several cases, in which self-represented litigants filed court documents citing nonexistent cases that appear to have been generated by AI tools.¹¹⁸

¹¹⁵ Law Society of Ontario, “[About A2I—The need for the A2I program](#)” (last visited 14 February 2025), online: < lso.ca>[/about-lso/access-to-innovation/about-a2i].

¹¹⁶ *Ibid.*

¹¹⁷ Bonardi & Branting, *supra* note 112 at 41.

¹¹⁸ Eugene Volokh, “[Six Federal Cases of Self-Represented Litigants Citing Fake Cases in Briefs, Likely Because They Used AI Programs](#)” (13 November 2023), online: <reason.com> [perma.cc/FG6C-DJBK]. See also *Kruse v Karlen*, 692 SW3d 43 (Mo Ct App 2024) at 48-53; *Morgan v Community Against Violence*, 2023 WL 6976510 (DNM 2023); *Taranov v Area Agency of Greater Nashua*, 2023 WL 6809637 (1st Cir 2023); *Whaley v*

Law practice regulatory bodies and courts now face the difficult task of determining appropriate boundaries for the use of these tools by self-represented litigants. Commenting on this issue, Brimo applied the American Bar Association's position applicable to limited-scope representation namely: "some legal help is better than none."¹¹⁹ This view suggests that the use of AI tools by self-represented litigants, even with their limitations, may still offer critical support to those unable to afford professional legal services. Bonardi and Branting rightly noted the following:

Legal AI tools can offer essential guidance, simplifying complex legal processes that would otherwise be daunting and inaccessible. Preventing unrepresented litigants from using AI systems widens the justice gap, as many individuals lack the resources to secure traditional legal assistance, and the number of people in need of assistance is far greater than the number able to provide it.¹²⁰

Rather than prohibiting the use of generative AI tools by self-represented litigants—a step that could exacerbate access-to-justice issues for society's most vulnerable members, regulatory bodies should focus on ensuring the quality and reliability of these tools, thus democratizing access to legal services through AI without jeopardizing public interest. Initiatives like the sandbox programs being implemented by various law societies in Canada provide a framework for testing and improving generative AI technologies used in provision of legal services while maintaining regulatory oversight.¹²¹

Legal professionals acting against self-represented litigants in legal matters can also contribute to safeguarding the integrity of the legal process by diligently reviewing court filings from such litigants to ensure they do not rely on fabricated or inaccurate case law generated by the AI tools, which could undermine the administration of justice. Additionally, the various courts directives requiring all litigants, whether represented or self-represented, to disclose their use of AI tools in any documents submitted to the court will also play an important role in addressing this

Experian Info Solutions Inc, 2023 WL 7926455 (SD Ohio 2023); see also David Lim, "[The Perils of Generative AI in the Courtroom—Judicial Warning from *May v Costaras* \[2025\] NSWCA 178](https://tinyurl.com/2czfc2j4)" (20 August 2025), online: <https://tinyurl.com/2czfc2j4>.

¹¹⁹ Brooke K Brimo, "How Should Legal Ethics Rules Apply When Artificial Intelligence Assists Pro Se Litigants?" (2022) 35:4 *Geo J Leg Ethics* 549 at 574.

¹²⁰ Bonardi & Branting, *supra* note 112 at 50.

¹²¹ See for example, the Law Society of Ontario (LSO) [Access to Innovation Program](https://tinyurl.com/tac2mhkk) (A2I) <<https://tinyurl.com/tac2mhkk>>; Law Society of British Columbia (LSBC) [Innovation Sandbox](https://tinyurl.com/yru52htb) <<https://tinyurl.com/yru52htb>>.

challenge.¹²² This transparency will help mitigate risks while promoting responsible use of generative AI tools in the justice system.

6. Regulatory Responses to the Use of Generative AI in the Legal Profession in Canada

Provincial and territorial law societies, along with courts across Canada, have issued notices, directives, and guidelines on the use of AI tools by parties appearing before the courts, including both lawyers and self-represented litigants. While these directives differ in focus, they share common themes that emphasize lawyers' fundamental duties to the administration of justice, including competence, confidentiality, and candour towards both the court and clients.

In Alberta, the Law Society of Alberta's Generative AI Playbook¹²³ identifies various ways in which lawyers can integrate generative AI into their practices, such as client relationship management, trial preparation, document drafting, legal research, summarizing case law and precedents, practice management, and marketing. However, the playbook also highlights the risks associated with AI use, including concerns related to confidentiality, reliability, data security, privacy, and copyright infringement. To mitigate these risks, it provides 12 key recommendations for lawyers that address ethical considerations, such as privacy, confidentiality, and clients informed consent.

Further, the Alberta Tri-Court Notice to the Profession¹²⁴ cautions lawyers against citing, without verification, legal authorities or analysis derived from LLMs in court submissions. It emphasizes that all references to case law, statutes, and legal commentary must come from authoritative sources and that any AI-generated submissions must be independently reviewed by a human. Similar directives have been issued by the Provincial Court of Nova Scotia,¹²⁵ Supreme Court of Nova Scotia,¹²⁶ and the

¹²² See Federal Court, "[Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings](#)" (20 December 2023), online: <fct-cf.gc.ca> [perma.cc/Z4D3-3Yc7] [Federal Court, "December 20 Directive"]; Federal Court, "[Notice to the Parties and the Profession The Use of Artificial Intelligence in Court Proceedings](#)" (7 May 2024), online: <fct-cf.gc.ca> [perma.cc/XVX3-MKBS].

¹²³ Law Society of Alberta, *supra* note 100.

¹²⁴ Alberta Courts, *supra* note 54.

¹²⁵ Provincial Court of Nova Scotia, "[The Use of Artificial Intelligence \(AI\) and Protecting the Integrity of Court Submissions in Provincial Court](#)" (27 October 2023), online (pdf): <courts.ns.ca> [perma.cc/MY92-4LW3].

¹²⁶ Supreme Court of Nova Scotia, "[Ensuring the Integrity of Court Submissions When Using Generative Artificial Intelligence \("AI"\)](#)" (18 October 2023), online (pdf): <courts.ns.ca> [perma.cc/Q3MU-8RH8].

Supreme Court of Newfoundland and Labrador,¹²⁷ each underscoring the importance of accuracy and accountability in AI-assisted legal work.

The Nova Scotia Barristers' Society's guide offers additional recommendations for legal professionals using open-source generative AI.¹²⁸ It advises against inputting private, confidential, or privileged information into AI queries or prompts, recognizing the risks associated with third-party AI platforms. The guide further stresses the importance of complying with ethical obligations, including obtaining client consent before employing AI tools in drafting legal documents or preparing court submissions.

The Law Society of British Columbia has similarly addressed the ethical implications of AI in legal practice.¹²⁹ Its directive highlights that AI use presents challenges that affect multiple areas of professional responsibility under the Code of Professional Conduct. These encompass confidentiality, honesty and candour, information security, reasonable fees and disbursements, fraud prevention, and the mitigation of bias in legal work. The directive instructs lawyers to use AI responsibly while preserving the integrity of the legal profession. In cases where AI tools are used in court-related work, disclosure to the court may be required to maintain transparency and uphold professional obligations.

Several regulatory notices, including those issued by the Law Society of Saskatchewan¹³⁰ and the Law Society of Manitoba,¹³¹ also underscore the critical importance of safeguarding client confidentiality when using third-party AI services. These guidelines advise lawyers to assess whether confidential client information is being retained or accessed by the AI service providers and to ensure compliance with professional conduct rules and privacy legislation. Lawyers are urged to exercise due diligence in selecting AI tools, to prevent inadvertent breaches of confidentiality.

¹²⁷ Supreme Court of Newfoundland and Labrador, "[Notice to the Profession and General Public: Ensuring the Integrity of Court Submissions When Using Large Language Models](#)" (12 October 2023), online: <court.nl.ca> [perma.cc/T6KH-MM72].

¹²⁸ Nova Scotia Barristers' Society, "[Artificial Intelligence in the Practice of Law: What is AI and can I or should I use it in my practice?](#)" (2023), online (pdf): <nsbs.org> [perma.cc/77TNP-DMFW].

¹²⁹ Law Society of British Columbia, "[Practice Resource: Guidance on Professional Responsibility and Generative AI](#)" (October 2023), online (pdf): <lawsociety.bc.ca> [perma.cc/4X5F-RD38].

¹³⁰ Law Society of Saskatchewan, "[Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law](#)" (last modified February 2024), online (pdf): <lawsociety.sk.ca> [perma.cc/R255-CBAM].

¹³¹ Law Society of Manitoba, "[Generative Artificial Intelligence \(AI\) Guidelines](#)" (last visited 15 February 2025), online (pdf): <lawsociety.mb.ca> [perma.cc/J32Q-CHE9].

The Law Society of Ontario's White Paper on Licensees' Use of Generative Artificial Intelligence¹³² identifies several risks that legal professionals must consider when using generative AI, including the following: (1) inadvertent disclosure of confidential information, (2) hallucinations and inaccuracies, (3) bias, (4) the impact on the licensee–client relationship, and (5) the risk of AI tools improperly providing legal advice. The white paper emphasizes that rules of professional conduct relevant to AI use include those governing competence, confidentiality, supervision, the lawyer–client relationship, fees and disbursements, and discrimination and harassment. To mitigate risks, it recommends best practices, such as developing internal organizational policies, conducting thorough due diligence on AI tools before implementation, and maintaining competence in the use of AI tools in legal workflow.

Québec courts¹³³ have also issued directives on the use of AI in legal submissions.¹³⁴ These directives stress the necessity of maintaining accuracy and professional integrity when integrating LLMs into legal practice. The courts instruct lawyers to exercise caution when referencing AI-generated legal authorities or analyses, ensuring that submissions rely only on authoritative sources for case law, statutes, and legal commentary. Lawyers must independently verify AI-generated content to prevent errors or misleading references, reinforcing the principle that AI should *augment*, not replace, human legal expertise.

These directives collectively highlight a common regulatory approach across Canadian legal jurisdictions: while generative AI presents valuable opportunities for enhancing legal practice, its use must be carefully managed to uphold professional responsibility, client protection, and the integrity of the justice system.

At the federal level, the Federal Court of Canada's directives¹³⁵ align with broader concerns about the potential risks associated with AI-

¹³² Law Society of Ontario, White Paper, "[Licensee use of generative artificial intelligence](#)" (April 2024), online: <lso.ca> [perma.cc/2PU3-EZ47].

¹³³ The Court of Québec, Superior Court of Québec, and the Court of Appeal of Québec.

¹³⁴ Superior Court of Québec, Notice to the Profession and Public, "[Integrity of Court Submissions While Using Large Language Models](#)" (24 October 2023), online: <coursuperieureduquebec.ca> [perma.cc/Q26X-SPEA]; Court of Québec, "[Notice to the Legal Community and the Public](#)" (26 January 2024), online: <courduquebec.ca> [perma.cc/QK5U-558G]; Court of Appeal of Québec, "[Notice Respecting the Use of Artificial Intelligence Before the Court of Appeal](#)" (8 August 2024), online: <courappelduquebec.ca> [perma.cc/4EJS-ZMB2].

¹³⁵ Federal Court, "December 20 Directive", *supra* note 118; Federal Court, "[Interim Principles and Guidelines on the Court's Use of Artificial Intelligence](#)" (20

generated legal content, particularly the phenomenon of hallucinations. The directive reinforces that legal professionals must independently verify the output from any AI-assisted research, ensuring that submissions to the court remain accurate and reliable. This requirement serves as a safeguard against the risks posed by over-reliance on AI-generated case law, statutory interpretation, or legal analysis without human oversight. The directive also imposes the obligation to disclose the use of AI tools “capable of generating new content and independently creating or generating information or documents, usually based on prompts or information provided to the system.”¹³⁶ It exempts disclosure in the case of any AI tool “that lacks the creative ability to generate new content.”¹³⁷

In contrast to the Federal Court’s targeted disclosure requirement, the directives from the Court of King’s Bench of Manitoba¹³⁸ and the Supreme Court of Yukon¹³⁹ take a more generic and overbroad approach, requiring lawyers to disclose the use of *any* AI tool in their research or legal submissions to the court. This broad disclosure requirement highlights the need for regulatory approach to distinguish between routine AI tools—such as proofreading software that incorporates AI technology, whose use typically should not warrant disclosure—and advanced generative AI models that produce original content, the use of which should be clearly disclosed to the court.

A key principle underlying these directives is the preservation of professional accountability. The Federal Court’s notice affirms that use of AI tools does not absolve legal professionals of their ethical and professional obligations, emphasizing that all content submitted to the court must be subject to human review and validation.¹⁴⁰ This aligns with guidance from provincial law societies, such as the Law Society of Alberta and the Law Society of British Columbia, which caution against relying on AI-generated outputs without rigorous verification and oversight.

Moreover, the Federal Court’s directive on AI usage reflects a growing judicial trend in Canada, similar to measures adopted by other courts in

December 2023), online: <fct-cf.gc.ca> [perma.cc/P3NG-4QAB]; Federal Court, “[Notice to the Parties and the Profession—The Use of Artificial Intelligence in Court Proceedings](#)” (7 May 2024), online: <fct-cf.gc.ca> [perma.cc/XVX3-MKBS] [Federal Court, “May 7 Directive”].

¹³⁶ Federal Court, “May 7 Directive”, *supra* note 135.

¹³⁷ *Ibid.*

¹³⁸ Court of King’s Bench of Manitoba, Practice Direction, “[Re: Use of Artificial Intelligence in Court Submissions](#)” (23 June 2023), online: <manitobacourts.mb.ca> [perma.cc/Y6UX-M2L2].

¹³⁹ Supreme Court of Yukon, *supra* note 54.

¹⁴⁰ Federal Court, “May 7 Directive”, *supra* note 135.

Alberta, Québec, and Nova Scotia. Collectively, these directives acknowledge that while AI has the potential to enhance legal practice, its integration into the legal profession must be guided by strict ethical standards, procedural safeguards, and unwavering professional responsibility. As AI technologies continue to evolve, ongoing regulatory adaptation will be essential to ensure that legal professionals can harness AI's capabilities without compromising the integrity of legal proceedings or eroding trust in the justice system.

7. Conclusion and Recommendations

The rapid integration of generative AI into the legal profession presents both unprecedented opportunities and significant ethical, regulatory, and professional challenges. AI-driven tools offer legal professionals enhanced efficiency in research, document drafting, document review, and case analysis, enabling them to deliver faster and more cost-effective legal services. However, as demonstrated throughout this paper, the adoption of these technologies also raises critical concerns, including hallucination, confidentiality risks, bias, liability, technological competence, and unauthorized practice of law. Left unchecked, these issues could undermine the integrity of the legal profession, erode public confidence in the justice system, and expose both clients and legal practitioners to substantial risks.

Regulatory bodies and courts in Canada have responded to these emerging challenges by issuing directives aimed at ensuring that generative AI use aligns with core legal and ethical principles such as competence, confidentiality, candour, and accountability. These directives, while essential, must evolve to keep pace with the continuing advancements in generative AI technology. The crux of the regulatory challenge with generative AI use in the legal profession is striking a careful balance between fostering innovation and maintaining the highest ethical and professional standards.

To ensure the responsible use of generative AI in the legal profession, law societies must therefore take a proactive approach to regulation. The following recommendations outline a strategic framework for the continued development of ethical and professional guidelines:

I. *Establish Comprehensive AI-Specific Ethical Guidelines*

While some law societies have issued preliminary AI-related directives, a more comprehensive ethical framework is needed. Law societies should develop detailed guidelines tailored to the practical realities of generative AI use in legal practice. These guidelines should outline permissible and impermissible uses of generative AI, set minimum standards for competence, and clarify

the obligations of lawyers when using AI-generated materials in the legal workflow.

II. ***Mandate AI Competency Training for Lawyers***

The duty of technological competence should be strengthened through mandatory continuing legal education and professional development programs for lawyers. Given the growing prevalence of AI tools in legal practice, periodic AI training should be required for lawyers, focusing on AI technologies relevant to their specific areas of practice. This training should ensure that lawyers are well-versed in both the benefits and risks associated with AI tools. The training should include best practices for AI-assisted legal research, drafting, eDiscovery, client confidentiality, and risk management when using AI-generated content.

III. ***Require Transparent Disclosure of AI Use in Court Submissions***

Consistent with the Federal Court's directive, law societies should mandate lawyers to disclose their use of generative AI in legal research and drafting of documents filed before the courts.¹⁴¹ This requirement is particularly crucial given generative AI's capacity to generate new and original contents, along with the inherent risks associated with its use. To promote uniformity across jurisdictions, regulatory bodies should establish standardized disclosure requirements. However, AI-powered assistive tools, such as proofreading and citation-checking software, which do not generate novel legal content, should be exempt from disclosure obligations.

IV. ***Implement AI Verification and Human Oversight Obligations***

The AI-specific ethical guidelines proposed here should explicitly impose an obligation of accountability on lawyers for any AI-generated content used in their legal work. Law societies should impose a clear obligation for human review and verification of AI-assisted research and drafting. Lawyers must ensure that all legal citations, arguments, and analyses generated by AI are independently verified before submission to clients, courts, or opposing parties.

V. ***Strengthen Confidentiality Safeguards for AI Use***

To prevent inadvertent disclosure of client's confidential information, law societies should develop clear rules on the use of AI tools that process or retain client information. Lawyers should be prohibited from inputting confidential client information into

¹⁴¹ *Ibid.*

AI platforms that do not guarantee confidentiality. Additionally, an ethical obligation of due diligence should be imposed on lawyers seeking to procure AI tools/services, requiring them to take proactive steps to ensure that vendors guarantee the confidentiality of information entered into an AI system—before procuring or deploying the tool in their legal practice.

VI. ***Expand Regulatory Sandboxes for Legal AI Innovation***

Law societies should expand regulatory sandbox initiatives to encourage innovation, while ensuring appropriate safeguards. These controlled environments would allow law firms, startups, and legal tech companies to develop AI-driven legal solutions while undergoing regulatory scrutiny to ensure compliance with professional and ethical standards.

VII. ***Define the Boundaries of AI-Assisted Legal Services and Unauthorized Practice of Law***

As AI continues to reshape the legal landscape, the UPL remains fluid and requires clarification. Law societies must establish clear guidelines to delineate the permissible use of AI-powered legal tools while safeguarding against UPL. While AI-assisted legal services have the potential to enhance access to justice, they must not supplant human legal expertise in matters that require professional judgment. Regulatory frameworks should clearly distinguish between acceptable AI-assisted functions, such as document automation and guided legal research, and activities that constitute UPL. By setting these parameters, law societies can ensure that AI tools complement legal practice while maintaining the integrity of the profession and protecting the public.

VIII. ***Encourage Collaboration Between Legal Professionals and AI Experts***

The legal profession has traditionally safeguarded its monopoly over legal services to prevent non-lawyers from engaging in the provision of legal services. However, addressing the evolving risks and challenges posed by AI in legal practice requires an interdisciplinary approach. Law societies should actively foster collaboration between legal professionals, data scientists, ethicists, and AI researchers to guide the development of AI tools for legal applications. Such partnerships will help ensure that these technologies are designed and deployed in ways that align with established legal standards and ethical obligations. By embracing interdisciplinary collaboration, the legal profession can integrate AI advancements responsibly, while upholding the integrity of legal services.

- IX. ***Monitor AI Developments and Adapt Regulations Accordingly***
AI technology is advancing at an unprecedented pace, requiring regulatory bodies to remain adaptive in addressing the evolving challenges it presents. To ensure effective oversight, law societies should consider establishing dedicated AI oversight committees comprising both legal professionals with some expertise in AI technology as well as other technical AI experts. These committees would be responsible for continuously monitoring advancements in AI, evaluating their implications for legal practice, and assisting regulatory bodies in developing or updating professional guidelines, as necessary, to maintain ethical and professional standards in an AI-driven legal landscape.

Law societies must take decisive action in establishing clear, enforceable guidelines that govern generative AI use in the legal profession. By prioritizing transparency, accountability, and competency in AI adoption, regulatory bodies can ensure that generative AI enhances—rather than undermines—the integrity of the legal system. A proactive and balanced approach to generative AI regulation will enable legal professionals to leverage AI responsibly while maintaining public trust in the legal profession and the justice system.