

Artificial Intelligence in the Practice of Law

What is AI and can I or should I use it in my practice?

Background

Members are curious about artificial intelligence. It's no wonder, everyone has heard of ChatGPT at this point. It's the fastest-growing software product of all time - faster than every social network or search engine that we've ever seen, or anything, really. It hit a million users in only five days, according to Statista¹. By comparison, Netflix took 3.5 years, and Instagram took 2.5 months, despite arguably having far more mass appeal than a chatbot that generates text.

What is AI? What does it do? What do I need to worry about? Generative AI has garnered a lot of attention recently and the Supreme Court of Nova Scotia has issued a [statement](#). As reported in [Canadian Lawyer Magazine](#), other Canadian courts have also issued directives on the subject. That said, generative AI is one of many categories or subsets of AI that can be used in legal practice. Other tools can help with document creation, review, classification and organization, analyzing contracts, predicting results and carrying out legal research.

What is Artificial Intelligence in the context of a legal practice?

Isn't AI simply using computers to automate tasks that a human would otherwise perform? Well, it's partly that. The big difference between simple automation and AI is that the types of tasks being automated are those that would require the use of high-order cognitive processes associated with human intelligence. Think about playing chess, translating languages or driving a vehicle. Computers can learn to do these things by detecting patterns in data and using knowledge rules, and information input by humans. Remember that today's AI excels in narrow, limited settings. Computers are not (yet) capable of abstract reasoning, concept comprehension, flexible understanding, and general problem solving. Those things are left up to you, the lawyer!

What should I use AI for?

Whatever the answer is here, you cannot rely on AI alone to produce the desired result. Even the best AI tools require human supervision and quality control. This is especially important for lawyers.

In your day-to-day practice, you can use AI to help you do simple things like organize or protect your email (think of spam filters for example or creating rules to organize your inbox). You can also use software to help you organize and sift through thousands of documents when you're preparing for a discovery, or to help you do some legal research or drafting, or to create precedent documents such as contracts, letters, or various types

¹ [Statista - The Statistics Portal for Market Data, Market Research and Market Studies](#)

of agreements. You can also find some AI tools to help you with contract review and other due diligence tasks.

Be vigilant

Remember that different problem areas have different characteristics that make them more or less amenable to AI. Technology tends to work best for activities where there are underlying patterns, rules, definitive right answers, and semi-formal or formal structures that make up the process. By contrast, AI is not best-suited for judgement-oriented tasks. To the extent a problem area looks open-ended, value-laden and subjective, or without definitive right or wrong answers, AI technology will tend to be much less useful.

It goes without saying that you should never defer to a computer in the decision-making process. As a practicing lawyer you have a duty to provide competent legal services. Be mindful of the potential for bias in algorithmic decision making. While some upcoming [legislation](#) might change that, at the moment there is no accountability or transparency around how AI systems are making decisions, nor assurances that the computer will make those decisions based on balanced data sets. As we will see specifically in the case of generative AI, there are also some privacy and intellectual property concerns.

What about ChatGPT or other sources of generative AI?

Generative AI is the kind of AI everyone is talking about. It is the AI that can create text, images and music based on the data with which it was trained. By now, most of us have heard about ChatGPT. It's probably the most common web-based free AI tool. As part of the generative AI family of tools, as its name suggests, it will automatically generate answers to your questions. In the legal context, you've probably also heard that it's prone to what the AI community refers to as "hallucinations". In other words, because the data set is incomplete and the heuristic code is not perfect, the system will generate imperfect or flat out incorrect answers, and even [make up case law](#)! In June, 2023, New York attorney Steven Schwartz faced his own trial when he used the popular AI system ChatGPT to research precedent for a case in which a man sued an airline for personal injury. Six of the seven cases he used were entirely invented by the AI. Not only should you double-check any sources provided by generative AI systems, but remember that AI is not great at problem-solving or understating concepts, especially when there isn't a definitive answer. As a lawyer, most questions you deal with do not have definitive answers, are value-laden, subjective, complex, and require the use of skilled judgement.

That said, it's not all doom and gloom. Generative AI tools can be useful to you as long as you remember a few basic things:

1. The free online version of ChatGPT is an open-source system meaning that any information that you enter into the system is absorbed into the system as a way to help the computer expand its learning. As a result, whatever information you enter into the system is now potentially available to all users. Remember that when you

phrase your queries or questions: never refer to private, confidential, or privileged information.

2. Remember the basic tenets of intellectual property, and citations: you asked a question, but who owns the rights to the answer that was generated?
3. Ethical concerns:

A recent survey of law firm lawyers illustrated the ethical concerns associated with generative AI — a large majority (82%) of those surveyed said they believe that ChatGPT and generative AI **can** be readily applied to legal work; while a much smaller majority (51%) said that ChatGPT and generative AI **should** be applied to legal work².

Your approach to AI and its use in your legal practice should be informed by your duty of competence, which extends to technological competence³. If you're going to use AI and technology, you must know how to use it properly. Lawyers are also subject to a duty of efficiency. Rules of professional conduct across Canada explicitly include an obligation to provide efficient legal services. If there is a sufficiently accessible, reliable, and secure AI technological tool that can radically, or even materially, reduce the time that a lawyer takes to do a task, then there would seem to be a strong argument that a lawyer's efficiency obligation mandates its use (or the use of similar tools). Soon enough, you may need to start thinking about the possibility of having a positive obligation to use AI tools in your practice.

4. Do you have your client's consent to use AI in the preparation of documents or submissions on their behalf? Using data from one client to train AI might come to the benefit of other clients in similar situations.
5. Think about potential conflicts of interest issues – what if opposing counsel is also using the same AI tool? Is your client comfortable with the same AI supplier supplying output to the opposing party?

Be prepared for clients to challenge your advice more than ever before, and know how to caution them when it comes to using open-source generative AI.

Will AI democratize the legal profession? You know this day will come. You will provide an opinion to a client and your client will turn to ChatGPT to see if you're correct. Remember that justifying your job is easy: As much as generative AI tools seem cutting edge, there's still a lot of work to be done. Especially when it comes to free open-source

² [New report on ChatGPT & generative AI in law firms shows opportunities abound, even as concerns persist - Thomson Reuters Institute](#)

³ NSBS *Code of Professional Conduct*, see Competence – 3.1-2, commentary 4A and 4B

generative AI which relies on largely unvetted inputs from unvetted sources. If the inputs are inaccurate, then the outputs are likely to be inaccurate as well. But it's not just a question of inputs and outputs. Remember that at this stage, AI isn't actually intelligent in the human sense: it's not capable of abstract reasoning, concept comprehension, flexible understanding, or general problem solving. It can't make judgment calls and it's not particularly useful when the problem looks open-ended, subjective, or without a definitive right or wrong answer. If everything had a definitive right or wrong answer, we wouldn't need lawyers! AI does not replace people, it does not replace lawyers.

Resources:

- ***Artificial Intelligence and Law: An Overview***, Harry Surden, Georgia State University Law Review, Volume 35, Issue 4, Summer 2019
- ***Automating Risk Analysis in Corporate Insurance Portfolios with Computable Contracts***, Raphael Ancellin, The Stanford Center for Legal Informatics
- ***Computable Contracts and Insurance***, The CodeX Insurance Initiative Working Group, The Stanford Center for Legal Informatics
- ***The Dawn of AI Law: The Canadian Government Introduces Legislation to Regulate Artificial Intelligence in Canada***, McCarthy Tetrault, July 11, 2022.
- ***Artificial Intelligence and The Law: A Comprehensive Guide for the Legal Profession, Academia, and Society***, Dessimslav Dobrev et al., 2021, Carswell
- [Guide to artificial intelligence regulation in Canada | Insights | Torys LLP](#)
- [AI and Legal Ethics 2.0: Continuing the Conversation in a Post-ChatGPT World - Slaw](#)
- [New report on ChatGPT & generative AI in law firms shows opportunities abound, even as concerns persist - Thomson Reuters Institute](#)
- [Professional-responsibility-and-AI.pdf \(lawsociety.bc.ca\)](#)

Sample of AI tools dedicated for legal practice:

- [The Complete Guide to AI for Lawyers in 2023 - Spellbook - AI Contract Drafting & Review](#)
- [Harvey | Generative AI for Elite Law Firms](#)
- [AI-Powered Research & Analysis | Blue J L&E](#)
- [LexisNexis® Legal AI Tools](#)
- [Law Firms We Hear You! Introducing Microsoft 365 Solution for Legal - Microsoft Community Hub](#)
- [Robin AI - We Make Contracts Simple & Fast With AI](#)
- [grapple.uk](#) (UK employment adviser)
- [DISCO \(csdisco.com\)](#)
- [Artificial Intelligence for eDiscovery \(relativity.com\)](#)
- [Contract Drafting AI \(spellbook.legal\)](#)
- [Chat GPT, Generative AI, and Law: Opportunities and Challenges | Clio](#)
- [Casetext - CoCounsel](#)
- [CoCounsel, our new AI legal assistant powered by OpenAI, is here—and it will change the practice of law - Casetext](#)
- [Smith.ai 24/7 Live Receptionists, Outreach & Chats](#)
- [Home - Gideon Legal Chatbot Software](#)