GENERATIVE ARTIFICIAL INTELLIGENCE

Guidelines for Use in the Practice of Law

April 2024

Preamble

It is important for lawyers to learn about AI and its implications in legal practice. These guidelines are intended to help with that learning process and to assist Manitoba lawyers in using generative AI in a manner consistent with the professional obligations set out in the *Code of Professional Conduct*.

Generative AI programs for lawyers are rapidly developing. Because new technical and legal developments will arise and affect the recommendations in these guidelines, it is important to stay informed on new issues to continue to practise responsibly and in compliance with professional obligations. If you have questions, do not hesitate to contact the Law Society for guidance.

A. What is Artificial Intelligence?

Artificial Intelligence (AI) is the ability for computers to imitate cognitive human functions such as learning and problem-solving. Through AI, a computer system uses math and logic to simulate the reasoning that humans use to learn from new information and make decisions. Spell-check is a basic form of AI.

Machine learning is when we teach computers to extract patterns from collected data and apply them to new tasks that they may not have completed before. While they are not the same, machine learning is considered a subset of AI.

Large Language Models (LLMs) are computer algorithms that process natural language inputs and predict the next word based on what it has already seen.

Generative AI is a machine-learning model trained to create new data, rather than making a prediction about a specific dataset. A generative AI system is one that learns to generate something that resembles the data it was trained on. Although not all generative AI tools are built on LLMs, all LLMs are a form of generative AI.

Generative AI can generate new content that seems like it was created by humans, in response to prompts (instructions and information entered by the user). Current examples of generative AI are ChatGPT (OpenAI), Bard (Google), and CoPilot (Microsoft). These are general-purpose generative AI tools. They were not designed to be used for legal research or drafting.

Other new generative AI tools have been designed specifically for lawyers to use in their practices, including for legal research (e.g. Lexis+ AI and products from Westlaw such as CoCounsel). These tailored AI tools have additional safeguards to address concerns about accuracy and possible breaches of confidentiality.

Some law firms are creating their own generative AI tools, using their own data so the results generated are proprietary in nature.

B.   Benefits and Risks of Using Generative AI in Your Legal Practice

Generative AI can be an effective tool in the delivery of legal services that lawyers may soon be expected to take advantage of for the benefit of their clients. Similar to the adaptation by lawyers of electronic rather than manual case research, the use of generative AI may become commonplace. It has potential utility in research, analysis, drafting and reviewing correspondence, contracts and briefs, preparation for cross examination and trial, as well as in general administrative matters, client interactions and social media.

Generative AI is not an alternative to legal thought, analysis and skill, but it can be utilized as a useful adjunct in the delivery of legal services. As such, all potential usage must be approached with caution and used with human consideration, review and oversight.

When used appropriately, generative AI may enhance access to justice by increasing lawyers' ability to provide more efficient legal services for their clients. It may also enable lawyers to expand their client base and provide legal services to those whose legal needs otherwise go largely unmet. Members of the public also may be able to use generative AI to better understand the legal system or a particular legal problem. However, over-reliance on generative AI results may lead to real harm if used to resolve legal issues without the assistance and skills that only a competent human being can provide.

C.   Guidelines

1.   Be Technologically Competent

Lawyers have a duty to provide competent legal services to their clients. This duty includes understanding and being able to use appropriate technology, and appreciating the associated benefits and risks. Before you use a generative AI tool, make sure you understand how the technology works, its limitations, the terms of use and that AI product's policies governing the use of clients' data.

If you are not careful and specific in the prompts or queries you give the AI tool, you may get results that are inappropriate or incomplete. Critically reviewing and validating the answers generated also is crucial to ensure that the answers or results are valid and appropriate for your matter.

While generative AI tools may assist in the delivery of competent legal services, understand the risks. Some tools do not constantly update data, so the answer or product it generates for you may be based on information that is no longer current. Also, these tools aim to please so if the tool cannot find an answer, they have been known to "hallucinate" or make up information, including law, cases and citations. Because the output may be inaccurate, incomplete, outdated, inappropriate or breach confidentiality, human oversight remains essential, even for those generative AI tools designed for legal purposes and with additional safeguards.

Lawyers must apply their independent and trained judgment when acting for clients. Professional judgment cannot be delegated to generative AI and remains your responsibility at all times.

Competence: Code Rule 3.1-2, Commentaries 4A and 4B
Quality of Service: Code Rule 3.2-1

2.   Maintain Confidentiality

A lawyer must not divulge any information concerning the business and affairs of the client acquired in the course of the professional relationship. This information must be held in strict confidence and must not be divulged. This duty of confidentiality is subject to some exceptions such as disclosure that is permitted with the client's consent.

Before you use a generative AI tool, be sure you understand the product. Consider whether confidentiality or client privilege may be lost. Some products may use the information that you input, including queries, prompts, documents and resources you have uploaded to train the AI. The AI may also share the query with third parties or use it for other purposes. Different generative AI tools will pose differing levels of risk to confidential client information. Developers of some tools have taken significant steps to ensure data security while others have not.

Even if a particular product does not share or otherwise use inputted information (or if you can take steps to opt out of the use of input information for training purposes), the AI tool may not have adequate security measures to prevent the disclosure of or inappropriate access to confidential client information by malicious actors. Consult with your IT or cybersecurity expert to ensure that any AI system used has appropriate data security, confidentiality, and retention protocols.

If confidentiality or privilege cannot be adequately protected by anonymizing client information, informed consent should be sought from the client before using the tool. Ensure you are knowledgeable and candid about the potential reuse of information shared as well as the potential loss of privilege.

Confidential Information: Code Rule 3.3-1

3. Guard Against Discrimination, Harassment, Bias

Lawyers are prohibited from discriminating against or harassing colleagues, employees, clients or any other persons.

Generative AI may be trained on biased or discriminatory information. Take steps to ensure that any work product or internal firm materials developed with the assistance of generative AI does not include biased, discriminatory or otherwise offensive language. If generative AI tools are used to support decision-making, ensure that the use of the tool does not cause you to violate your obligation not to discriminate or harass others.

Lawyers should engage in continuous learning about AI biases and law firms should establish policies and mechanisms relating to the use of AI generally which should include information about potential AI biases and how to address them.

Discrimination: Code Rule 6.3-1

4. Supervise

As a lawyer. you have a duty to directly supervise work done by junior lawyers, students, and by assistants who are not lawyers. You remain responsible for that delegated work.

Treat generative AI tools as another delegation of your work. Review the product AI tools produce for you, making sure it is accurate and conforms with your professional obligations. In all cases, apply independent and trained judgment when acting for clients.

In the workplace, establish clear policies about the permissible uses of generative AI and provide training about the ethical considerations, practical aspects and risks of generative AI use.

Direct Supervision Required: Code Rule 6.1-1

5. Treat Tribunals with Candour and Respect

When acting as advocates, lawyers are obligated to represent their clients resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect. This duty includes guarding against misstating facts or law, misstating the substance of an authority or failing to inform the tribunal of any relevant binding authority that has not been mentioned by an opponent.

Always review all generative AI results for accuracy including but not limited to, citations and any legal analysis and argument. Ensure that anything submitted to the tribunal is accurate, complete and appropriate.

Review materials submitted by others, and particularly the self-represented who may rely on information obtained through the use of a generative AI tool without the ability to appropriately verify and analyze it.

The Court of King's Bench [Practice Direction Re: Use Of Artificial Intelligence In Court Submissions](#) requires that when artificial intelligence has been used in the preparation of materials filed with the court, the materials must indicate how artificial intelligence was used.

Be mindful that different jurisdictions and tribunals have varied expectations in relation to disclosing the use of AI in preparation of submissions. These expectations should be identified early as they may influence the decision to use AI or the manner of its use.

Encouraging Respect for the Administration of Justice: Code Rule 5.6-1
Advocacy: Code Rule 5.1-1

6.   Comply with Applicable Laws and Rules

There are many legal issues arising from generative AI, including compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws as well as cybersecurity concerns.

For example, the [Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems](#) was introduced in September 2023. It temporarily provides Canadian companies with common standards and enables them to demonstrate, voluntarily, that they are developing and using generative AI systems responsibly until formal regulation is in effect.

The Artificial Intelligence and Data Act (AIDA), was introduced as part of the [Digital Charter Implementation Act, 2022](#). The AIDA would set the foundation for the responsible design, development and deployment of AI systems that impact the lives of Canadians. More information on AIDA is available [here](#).

These and other laws and rules are likely to evolve as the field of generative AI develops. Stay current on the applicable laws governing generative AI use to ensure you are in compliance when using generative AI tools in your legal practice.

7.   Communicate with Clients

When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter. This also applies to the use of AI tools on your clients' files.

Generative AI tools can perform certain tasks that clients may typically expect their lawyers to do, such as initial drafting. Consider disclosing to clients if you intend to use generative AI and provide explanations about how the technology will be used (e.g. research, analysis, initial drafting, document review, discovery, trial preparation). In some circumstances, you should explicitly inform a client about how generative AI is being used in their matter. Disclosure should include information about the benefits and risks of the intended generative AI use, including those risks related to breaches of confidentiality and potential loss of privilege.

Generative AI may also be used to help with client communication. For example, firms might use a client intake chatbot. Without appropriate safeguards, using generative AI chatbots could give rise to misunderstandings and miscommunications with clients. Exercise caution when using generative AI to assist with client communication and do not become overly reliant upon AI.

Honesty and Candour: Code Rule 3.2-2

8.   Charge Appropriately

A lawyer must not charge or accept a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion. In any proposed fee arrangement, be transparent about how the use of AI tools may affect legal fees and ensure clients understand the basis for fees and expenses, including those associated with the use of generative AI.

Fee arrangements should not generate an inappropriate windfall for a lawyer arising from the efficiencies created by using an AI tool to perform a certain task. Where Generative AI tools are used, time spent in various tasks might be reduced, creating efficiencies for counsel. It would not be appropriate to charge hourly fees reflecting the time it would have taken to generate the work product without the use of generative AI. However, it is appropriate to charge for the time spent in crafting and refining AI inputs and prompts and in reviewing, confirming, analyzing and editing generative AI tool output.

Reasonable Fees and Disbursements: Code Rule 3.6-1

Acknowledgements

These Guidelines have been created with reference to the following guides:

[Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law](#) (Saskatchewan)

[The Generative AI Playbook,](#) (Alberta)

[Practice Resource Guidance on Professional Responsibility and Generative AI,](#) (British Columbia)

[European Lawyers in the Era of Chat GPT: Guidelines on How Lawyers Should Take Advantage of the Opportunities Afforded by Large Language Models and Generative AI](#)

[Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law](#) (State Bar of California)

Resources

Artificial Intelligence in Legal Practice: Risks, Rewards and Responsibilities, The Isaac Pitblado Lectures, November 16, 2023:
> [Introduction to Artificial Intelligence](#)
> [Judges' Perspective on AI](#)
> [Promises and Pitfalls of Integrating AI Into Law](#)
> [Responsible and Ethical Use of AI](#)
> [Use of AI in Manitoba Practice](#)

[Canadian Privacy Regulators Launch Principles for Responsible Development and Use of Generative AI](#), December 7, 2023 News release, The Office of the Privacy Commissioner of Canada

[Principles for Responsible, Trustworthy and Privacy-Protective Generative AI Technologies,](#) Office of the Privacy Commissioner of Canada

[Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems](#)

The Artificial Intelligence and Data Act (AIDA), part of the [Digital Charter Implementation Act, 2022](#)

[Government of Canada Guidelines on the Use of Generative AI](#) (designed for federal institutions)

[Generative Artificial Intelligence](#), Government of Canada, from the Canadian Center for Cyber Security

[Beware of Ethical Perils When Using Generative AI](#), Maryland State Bar Association April 19, 2023

[Generative AI Ethics: 8 Biggest Concerns and Risks](#), TechTarget, November 1, 2023

[Managing the Risks of Generative AI](#), Harvard Business Review, June 6, 2023