

Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law



**Law Society
of Saskatchewan**

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This document is not intended to provide legal advice and is provided for informational use only.

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Guidelines For the Use of Generative Artificial Intelligence in The Practice of Law

Adapted for Saskatchewan with the assistance of Professor Amy F. Salyzyn from the Guidelines prepared by the California State Bar Committee on Professional Responsibility and Conduct, with reference to MIT's Task Force on Responsible Use of Generative AI for Law.

Preamble

Recent advances in artificial intelligence (AI), including the public release of new generative AI tools like ChatGPT, have inspired tremendous excitement about how AI technology may be used in legal practice. In addition to general-purpose tools like ChatGPT, generative AI tools specifically tailored to the legal services context are now on the market, and more continue to be developed. Also, platforms that lawyers already use for things such as legal research and practice management are increasingly embedding generative AI features.

Given the current context, it is important that lawyers engage in continuous learning about AI and its implications for legal practice. Legal workplaces should establish policies and mechanisms to identify, report, and address concerns about the use of AI. Generative AI tools, which can create new text and images in response to prompts (i.e. instructions from a user), carry potential benefits and risks for the practice of law. Many considerations surrounding generative AI use are the same as those arising from the use of other technologies. At the same time, special consideration of generative AI is warranted given some of its unique features. The technology's ability to create text, and in particular text that appears human-generated, makes it potentially useful across a wide-range of lawyering tasks. At the same time, this feature may invite overreliance. The outputs of generative AI tools may not always be sufficiently reliable for use in the legal services context without independent vetting by a lawyer. It is critical that lawyers are aware of these potential benefits and risks, among others canvassed in this document.

The Law Society of Saskatchewan has prepared this guidance document with the goals of:

1. helping lawyers use generative AI in a manner consistent with their professional obligations; and
2. assisting legal workplaces to develop appropriate internal policies on generative AI.

These guidelines are based on existing professional responsibility obligations for lawyers, as articulated by the [Code of Professional Conduct](#), and provide guidance on how to behave consistently with such obligations when using generative AI. The *Code* is, of course, not exhaustive. However, the existing *Code* provisions provide a helpful framework through which to consider a lawyer's ethical duties when it comes to new developments arising from the use of AI in the practice of law.

This area has evolved quickly and will continue to evolve. New technical and/or broader legislative developments may give rise to issues not covered in these guidelines. Lawyers retain the responsibility of ensuring that they practice in compliance with all applicable rules and laws.

For further guidance on this topic, lawyers are invited to contact the Law Society of Saskatchewan via Reception at reception@lawsociety.sk.ca.

Applicable Authorities 1 – Duties of Competence and Diligence

[Code of Professional Conduct](#) – ss 3.1-1, 3.1-2 (Commentary 4A and 4B)

Key considerations

A lawyer has a general duty to provide competent legal services. Pursuant to Commentary in the *Code*, this duty includes a requirement for a lawyer to ensure they understand, and have the ability to use, relevant technology. This includes understanding the benefits and risks associated with using a specific technology or choosing not to.

Generative AI tools can be used by lawyers to assist them in delivering competent legal services to their clients.

One key concern is that outputs from generative AI tools may include information that is inaccurate, incomplete, outdated or otherwise inappropriate for a legal task at hand.

Different tools will be more or less appropriate for different tasks. For example, a general-purpose tool, such as ChatGPT, was not designed to be used for legal research, but, there are tailored legal AI tools that have been created with legal research tasks in mind and have built in additional safeguards.

Practical steps

Before using a generative AI tool, a lawyer should ensure that they sufficiently understand how the technology works, its limitations, and the applicable terms of use and other policies governing the use of client data by the product.

A lawyer must critically review, validate, and correct both the inputs and the outputs of generative AI tools to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand.

The duty of competence requires more than the detection and elimination of false AI-generated results. Competence requires the continuous application of legal reasoning and analysis regarding all potential options and impacts, including those that are included or omitted from or by AI tools.

Overreliance on AI tools is inconsistent with the ethical and responsible practice of law. A lawyer must apply their independent and trained judgment when acting for clients.

A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical legal analysis fostered by traditional research and writing. For example, a lawyer may supplement any AI-generated research with human-performed research and supplement any AI-generated argument with critical, human-performed analysis and review of authorities.

Applicable Authorities 2 – Duty of Confidentiality

[Code of Professional Conduct](#) – ss 3.3-1 and 3.3-2

Key considerations

A lawyer has an obligation to hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information. This duty is subject to several enumerated exceptions, including an exception that permits disclosure with the client's consent.

Some generative AI products may utilize the information that is inputted, including prompts (i.e. the instructions given) and uploaded documents or resources, to train the AI, and may also share the query with third parties or use it for other purposes. Even if the product does not share or otherwise utilize inputted information, it may lack adequate security measures to prevent the inadvertent disclosure of confidential client information and/or inappropriate access to confidential client information by malicious actors. Consideration must be given to whether client confidentiality or privilege may be lost as a result of using a particular AI tool.

Different generative AI tools will pose differing levels of risk to confidential client information. The developers of some tools have taken significant steps to ensure data security, while others have not. Risks to client confidential information also vary depending on what a tool is being used for. For example, using a generative AI tool to create marketing text for a law firm website poses much less, if any, risk to client confidential information, in contrast to using a tool to prepare a client advice letter, which will most likely require the inputting of specific details relating to the client and/or their legal matter.

Practical steps

A lawyer should review the Terms of Use or other information to determine how a generative AI tool utilizes inputs. A lawyer who intends to input confidential and/or privileged information into a generative AI product should ensure that the provider does not share inputted information with third parties, or utilize the information for its own use in any manner, including to train or improve its product.

A lawyer or other designated professional in a legal workplace should consult with IT professionals or cybersecurity experts to ensure that any AI system used by the workplace has appropriate data security, confidentiality, and retention protocols. A lawyer must not input any confidential and/or privileged client information to a generative AI tool that lacks adequate confidentiality and security protections. A lawyer should anonymize client information and avoid entering details that could be used to identify the client.

If confidentiality and/or privilege cannot be adequately protected by anonymizing client information, informed consent should be sought from the client before using the tool. In obtaining the client's consent, lawyers must be candid about the potential reuse of information shared as well as the potential for the loss of privilege. Before seeking informed consent, a lawyer should also be candid with themselves about whether they sufficiently understand the generative AI tool and the potential risks to the client's confidential information. In circumstances involving especially sensitive information, a lawyer should consider whether simply not using the tool is a better course of action given the possibility for unexpected vulnerabilities to arise.

Applicable Authorities 3 – Duty to Comply with the Law

[Code of Professional Conduct](#) – ss 2.1-1, 2.1-2 and 3.2-7

Key considerations

A lawyer must comply with any applicable law when providing legal services. When acting for a client, a lawyer is prohibited from doing anything that the lawyer knows or ought to know assists in or encourages any dishonestly, fraud, crime, or illegal conduct.

These obligations apply to all aspects of a lawyer’s practice, including a lawyer’s use of generative AI tools.

There are many relevant and applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns.

Practical steps

A lawyer must ensure they stay up-to-date on the applicable law governing generative AI use. This includes analyzing the relevant laws and regulations with a view to ensuring that they are in compliance when using generative AI tools in legal practice.

Applicable Authorities 4 – Duty to Supervise and Delegation

Code of Professional Conduct – ss 6.1-1 and 6.1-3

Key considerations

Managerial and supervisory lawyers have a duty to supervise junior lawyers, students, and nonlawyer assistants.

The *Code* lists certain tasks that cannot be delegated to non-lawyers, including the giving of legal advice and “acting finally” in a matter, without reference to the lawyer, where the matter involves professional judgement.

Whether using human or technological assistance, a lawyer retains complete professional responsibility for all business entrusted to them and cannot inappropriately delegate tasks.

Practical steps

Generative AI tools should be treated as equivalent to nonlawyer assistance, and their outputs should be reviewed for accuracy and conformity with the lawyer’s professional obligations. In all cases, the lawyer should ensure that they are applying their independent and trained judgment when acting for clients.

Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and make reasonable efforts to ensure that their legal workplaces adopt appropriate measures to assist lawyers and other employees in complying with their professional obligations when using generative AI. This includes providing training on the ethical and practical aspects, and pitfalls, of generative AI use.

Applicable Authorities 5 – Communication

Code of Professional Conduct – ss 3.2-1 and 3.2-2

Key considerations

A lawyer has an obligation to communicate effectively with their clients, which includes ensuring that clients are properly informed about their matters and are able to provide the lawyer with instructions about their desired course of action.

Generative AI tools can perform certain tasks that clients would now typically expect their lawyers to do, such as initial drafting. Such tools can also help with certain tasks that clients may not anticipate, like, for example, suggesting lines of witness questioning. Effective communication may require, in some circumstances, that a lawyer explicitly inform a client about how generative AI is being used in their matter.

Generative AI may also be used to assist with client communication such as, for example, as part of a client intake chatbot. Without appropriate safeguards, using generative AI chatbots could give rise to misunderstandings and miscommunications with clients.

Practical steps

A lawyer should consider disclosing to a client if they intend to use generative AI in carrying out their representation. In certain cases, disclosure will be the most appropriate course of action to ensure that the lawyer meets their professional responsibilities to communicate effectively. 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.

Caution should be exercised when using generative AI to assist with client communication. Concerns relating to potential overreliance are also pertinent in this area.

Applicable Authorities 6 – Charging for Work

Code of Professional Conduct – ss 3.6-1

Key considerations

A lawyer is prohibited from charging fees that are not fully disclosed, fair and reasonable. Commentary to section 3.6-1 of the *Code* provides additional guidance as to what “fair and reasonable” means in this circumstance.

A lawyer cannot charge hourly fees for their time that do not reflect the time actually spent. If a lawyer uses an AI tool to generate work product more efficiently, they cannot charge hourly fees reflecting the time it would have taken the lawyer to generate the work product themselves. However, a lawyer may charge for the actual time spent crafting and refining AI inputs and prompts and reviewing and editing generative AI tool outputs.

A lawyer is permitted to enter into alternative fee arrangements with their clients, subject to the rules and laws applicable to such arrangements.

Alternative fee arrangements must also be fair and reasonable and should not generate an inappropriate windfall for the lawyer arising from efficiencies created by using an AI tool to perform a certain task.

The full disclosure requirement includes transparency about how the use of AI tools has impacted legal fees.

Practical steps

A fee agreement must explain the basis for fees and expenses, including those associated with the use of generative AI.

Applicable Authorities 7 – Candour to the Tribunal

Code of Professional Conduct – ss 5.1-1 and 5.1-2

Key considerations

A lawyer acting as an advocate is obligated to treat the tribunal with candour and respect. This includes guarding against misstating the facts or law, misstating the substance of an authority or failing to inform the tribunal of binding authorities that are on point.

Being mindful of these obligations when using generative AI tools is critical because, as previously noted above, the outputs of these tools may, in some cases, include information that is inaccurate or incomplete.

Some tribunals in Canada have responded to the possibility that lawyers and self-represented litigants may be using generative AI tools by requiring proactive disclosure of any use of generative AI when preparing submissions.

Practical steps

A lawyer must review all generative AI outputs for accuracy, including, but not limited to, any legal analysis and citations to authority, and correct any errors or misleading arguments before submission to the tribunal.

A lawyer should be conscious of the fact that different jurisdictions and tribunals have varied expectations in relation to disclosing the use of AI in preparation of submissions. Tribunal-specific expectations should be identified early as they may influence the decision to use AI or the manner of its use.

Applicable Authorities 8 – Prohibition on Discrimination, Harassment and Guarding Against Bias

Code of Professional Conduct – ss 6.3

Key considerations

A lawyer is prohibited from discriminating against or harassing colleagues, employees, clients or any other persons. The *Code* acknowledges that lawyers have “a special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws”.

Generative AI may be trained on biased information. A lawyer using generative AI tools should be aware of possible biases.

Practical steps

Lawyers should engage in continuous learning about AI biases and their implications for legal practice, and legal workplaces should establish policies and mechanisms to identify, report, and address potential AI bias.

A lawyer should 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, a lawyer must ensure that the use of the tool does not put them in violation of their obligations to not discriminate or harass.

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