



## Artificial Intelligence Practice Guidelines

Practical Guidance Lawyer Team

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Best Practices for Using Generative AI

### **Maintained**

This practice note discusses the practice guidelines regarding artificial intelligence ("AI") released by several Canadian provincial law societies. In particular, this practice note summarizes the key aspects of these guidelines and analyzes the impact of the guidelines on using generative AI in jurisdiction specific practice. Finally, this practice note outlines certain best practices applicable in all jurisdictions.

For further guidance regarding AI, see the Artificial Intelligence Resource Kit.

### **Introduction**

Given the recent surge in the use of AI, several Canadian law societies have released practice guidelines regarding the use of AI. It is important for counsel to understand the guidelines of the province or provinces in which they practice to ensure their practice is consistent with them. This practice note will summarize the guidance by jurisdiction and will then outline certain best practices applicable in all jurisdictions.

In order to understand the law society guidelines, it is important to define the following key concepts:

**Artificial Intelligence (AI)** – the capacity of computers or other machines to exhibit or simulate intelligent behaviour.

**Generative AI** – creates new content (text, code or other media such as music, art or photos) using generative models in response to a submitted prompt. These models learn the patterns and structure of their input training data and then generate new data that has similar characteristics.

**Large Language Models (LLMs)** – are a form of generative AI that create text in response to prompts. They use very large collections of language data in order to understand and produce text in a way that is similar to the way humans do. Certain tools, such as ChatGPT, use LLMs to create chat interfaces through which the tool provides responses to users' inputs that have been facilitated by the LLM.

**Hallucinations** – generative AI is designed to generate words or images based on the information it encounters in its training. By design, it fabricates information when it does not have sufficient data to answer a prompt. These events are known as hallucinations.

Lawyers can use generative AI for a variety of purposes such as:

- Basic legal research – for example, generative AI tools can help analyze case law and statutes and provide an overview of relevant legal principles.
- Marketing – generative AI tools can create content for social media posts, advertisements, websites or presentations.
- Editing documents.
- Summarizing documents such as opposing parties' materials, case law, contracts and memos.

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- Drafting documents such as memos, letters and even opening statements or examination questions.
- Client relationship management such as automated client intake and other administrative tasks.

When used appropriately, generative AI may enhance access to justice by increasing lawyers' ability to provide more efficient legal services. 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.

### Ontario

In April 2024, the Law Society of Ontario ("LSO") released a white paper on licensee use of generative AI. The white paper provides an overview of generative AI as well as guidance and considerations for licensees on how the professional conduct rules apply to the delivery of services empowered by generative AI. In addition, on April 11, 2024, the LSO issued a practice note entitled "Generative AI: Your professional obligations". Together, these documents outline the LSO's view of the risks of using generative AI in legal practice and the guidelines lawyers should follow to mitigate these risks and ensure compliance with the rules of professional conduct.

### ***Application of Rules of Professional Conduct***

The LSO has highlighted certain rules of professional conduct which must be considered when using generative AI:

<b>Rule of Professional Conduct</b>	<b>Application to Generative AI</b>
<i>Duty of competence</i> – lawyers must perform any legal services to the standard of a "competent licensee".	<p>To maintain this standard, lawyers should understand and be able to use technology that is relevant to the nature and area of their practice and responsibilities. Lawyers should also understand the benefits and risks associated with any relevant technology integrated or used in their practice.</p> <p>In order to comply with this rule in using generative AI, the LSO advises lawyers to consider the following:</p> <p><i>Risk of over-reliance</i> – since generative AI may contain errors or hallucinations, it can put a lawyer or its client's reputation and interests at risk. It is important for lawyers using any generative AI technology to understand its limitations.</p> <p><i>Need for basic literacy</i> – lawyers should take time to familiarize themselves with the generative AI tools that they intend to use so they are familiar with their capabilities, risks and legal implications.</p> <p><i>Choosing the right product</i> – lawyers should ensure the generative AI products they choose are suitable for the tasks being done. For example, generative AI software that is useful in developing marketing materials may not be appropriate for basic legal research.</p>

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<p><i>Confidentiality</i> – lawyers must at all times hold in strict confidence all information concerning the business and affairs of the client, including privileged communications. Lawyers also have legal obligations to protect their clients' privacy rights and must adhere to applicable privacy laws.</p>	<p>Risks exist with respect to confidential information, law firm proprietary information and privileged information.</p> <p>Developers of some generative AI tools may use inputs to train their AI or otherwise store or share that information with third parties while some tools have more rigorous data security and privacy measures. If a lawyer inputs confidential client information or proprietary law firm information into a generative AI tool, depending on the data security and storage measures used by the particular tool, there is a risk this information may inadvertently become public or otherwise inappropriately shared with third parties. Lawyers must therefore be mindful of what information they input or upload into a generative AI system.</p>
<p><i>Honesty and candour</i> – lawyers have a duty of honesty and candour to all clients on matters relevant to their retainer. This duty requires lawyers to inform clients of information known to them that may impact the client's interests in the matter.</p>	<p>In order to comply with this duty in using generative AI, the LSO advises lawyers to consider that, where the generative AI technology is relevant to the legal services provided and may impact the client's interests or outcome of the matter, or where there is concern about the risks associated with the generative AI technology, lawyers should inform their clients about the use of the technology. Lawyers should be prepared to explain to clients how they use the technology in their matter, any associated risks, and what steps are being taken to mitigate the risks.</p>
<p><i>Supervision and delegation</i> – while lawyers may delegate certain tasks, including to non-lawyers, where tasks are delegated lawyers remain responsible for all services rendered and all communications by and prepared by the delegee. The extent of supervision depends on the task and the experience of the delegee.</p>	<p>Since using generative AI tools is akin to receiving assistance from a non-lawyer, in order to comply with this rule using generative AI, the LSO advises lawyers to consider the following:</p> <p>Lawyers assume complete professional responsibility for their practice of law whether they receive assistance from non-lawyers or technological tools. Lawyers need to validate or confirm the accuracy and reliability of AI-generated information and use their own expert and independent judgment when providing legal services. If work is created using generative AI, it is still the lawyer's responsibility to ensure that it is their product and reflects their expert legal opinion.</p> <p>Lawyers cannot inappropriately delegate tasks – certain tasks require the input of a lawyer and the application of their legal competence. Generative AI is not a replacement for this.</p>
<p><i>Fees and disbursements</i> – lawyers can charge clients for legal fees and disbursements provided that the amount charged is fair, reasonable and has been disclosed to the client in a timely manner.</p>	<p>If lawyers are billing by the hour, they can only charge for the time actually spent, even if a generative AI tool has made the task much more efficient.</p> <p>Lawyers can consider alternative fee</p>

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	<p>arrangements as long as they are "fair and reasonable" and comply with the relevant rules and laws.</p> <p>Whether the cost of using generative AI or other technology can be passed on to the client as a disbursement depends on the specific circumstances. If it is passed on it must be fair and reasonable, disclosed to the client and billed at its actual cost.</p>
<p><i>Misleading the tribunal</i> – when acting as an advocate, lawyers have a duty not to mislead the tribunal. This includes not knowingly attempting to deceive the tribunal or influence the course of justice by offering false evidence, misstating facts or law, or otherwise assisting in any illegal conduct. Lawyers are also prohibited from misstating the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or other legal authority.</p>	<p>Lawyers should be aware of the increasing integration of generative AI within the Ontario court system and familiarize themselves with any official court notices or guidelines concerning the utilization of generative AI in proceedings.</p> <p>To date no Ontario courts or tribunals have issued guidance on the use of generative AI in proceedings. However, the Federal Court of Canada requires litigants to inform the court and other parties if they have used AI to create or generate new content in preparing a document filed with the court.</p>

### ***Risks of Using Generative AI***

The LSO has also identified the following specific risks that lawyers should consider when using generative AI:

- *Hallucinations* – generative AI tools can provide responses that include information that is fabricated or otherwise inaccurate but which appears authentic. Or, it has been suggested, that ChatGPT may reference law which has been overruled or may conflate jurisdictions. This could cause lawyers to rely upon inaccurate information.
- *Bias* – Models learn from a diverse range of information, and if the data contains biased or prejudiced information, the model may generate biased or prejudiced results.
- *Lawyer-client relationship* – many lawyers rely on website chatbots for client intake. The chatbots may use AI such as language recognition software or may incorporate generative AI to attempt to make interactions more efficient and personable. However, oftentimes the chatbots have been responding in manners contrary to the companies' interest. Such interactions could present additional risks such as developing a lawyer-client relationship without the lawyer's knowledge or the provision of inaccurate or otherwise unexpected information.
- *Provision of legal advice by generative AI* – if generative AI is used to interact with clients, the tool could respond to a client in a manner that would be construed by the client as legal advice. There is a risk that a client could interpret this advice as being tailored to their specific legal situation and rely on it.

### **British Columbia**

In October 2023, the Law Society of British Columbia ("LSBC") issued guidance on professional responsibility and risks associated with the use of generative AI.

#### ***Application of Rules of Professional Conduct***

The LSBC has highlighted certain rules of professional conduct which must be considered when using generative AI:

Rule of Professional Conduct	Application to Generative AI
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<p><i>Competence</i> – lawyers must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer, as defined in the Code, which includes:</p> <ul style="list-style-type: none"> <li>• Considering possible options and developing and advising the client on appropriate courses of action.</li> <li>• Implementing as each matter requires, the chosen course of action through the application of appropriate skills, including legal research, analysis and problem-solving.</li> <li>• Communicating at all relevant stages of a matter in a timely and effective manner.</li> <li>• Performing all functions conscientiously, diligently and in a timely and cost-effective manner.</li> <li>• Applying intellectual capacity, judgment and deliberation to all functions.</li> <li>• Pursuing appropriate professional development to maintain and enhance legal knowledge and skills.</li> <li>• Otherwise adapting to changing professional requirements, standards, techniques and practices.</li> </ul>	<p>If a lawyer’s legal services include using generative AI to perform tasks, they will need to be knowledgeable in the application of the technology.</p>
<p><i>Confidentiality</i> – lawyers have a duty to maintain strict client confidentiality with very limited exceptions.</p>	<p>Carefully consider what information needs to be supplied to the generative AI tool with particular attention to client confidential information. Ideally, client confidential information, including any information identifying the client, should be omitted from anything supplied to the generative AI tool.</p> <p>If redacting the data is not possible, lawyers should explore whether client consent to use the tool with such information is viable. Any consent should be fully informed and voluntary after disclosure in writing or orally with a written record of the communication. To obtain informed consent lawyers need to be aware of the potential risks of using generative AI tools, and have the ability to assess and properly explain those risks to the client. These risks including putting privilege at risk, including giving rise to potential arguments regarding waiver, and reuse of the confidential information by the generative AI tool for other purposes over which you have no control.</p>
<p><i>Honesty and candour</i> – lawyers must be honest and candid with their clients and must</p>	<p>It is prudent to make clients aware of how you plan to use generative AI tools in general</p>

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<p>inform clients of all information known to them that may affect the clients' interests.</p>	<p>and on their specific matters. Be prepared to explain and answer any questions the clients may have.</p>
<p><i>Responsibility</i> – lawyers are required to supervise staff and assistants to whom they delegate particular tasks and functions and to review non-lawyers' work at sufficiently frequent intervals and to ensure its proper completion.</p>	<p>While these rules were intended to cover human-to-human supervision, they provide an important reminder that lawyers are ultimately responsible for all work product they oversee, whether it is produced by a non-lawyer staff member or a technology-based solution. It is a lawyer's responsibility to review AI-generated content carefully to ensure its accuracy.</p>
<p><i>Information security</i> – lawyers are required to comply with LSBC rules regarding records and security of records including ensuring that any storage provider maintains records securely without accessing or copying the records, does not allow unauthorized access to or copying or acquisition of the records, and destroys records completely and permanently on instructions from the lawyer.</p> <p>Lawyers must also protect all records by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure and must notify the LSBC's Executive Director if the lawyer believes that there has been a loss of control or improper access of the lawyer's records, or failure of a third-party provider to destroy the records upon the lawyer's instructions.</p>	<p>Lawyers must be aware of how information is stored and secured, including any privacy or cybersecurity concerns that arise, when selecting a generative AI tool. Professional responsibility requirements and privacy law implications must be considered. Lawyers should consider the same issues as arise when selecting any other technology or software.</p>
<p><i>Requirements of courts and other decision-makers</i> –lawyers must respect rules of courts and other tribunals before which they appear.</p>	<p>Courts in some jurisdictions in Canada (such as the Federal Court of Canada), as well as some U.S. states, require lawyers to disclose when generative AI was used to prepare their submissions. Some courts even require disclosure of how generative AI was used. If intending to use generative AI, lawyers should check with the relevant court, tribunal or other decision-maker to verify whether they are required to attribute, and to what degree, the use of generative AI.</p>
<p><i>Reasonable fees and disbursements</i> – lawyers must not charge or accept fees or disbursements unless they are fair and reasonable and have been disclosed in a timely fashion.</p>	<p>Lawyers should reflect on how they will bill for the use of generative AI including what is a fair and reasonable fee for work completed by a generative AI tool and if generative AI allows for legal work to be completed more quickly what impact that will have on current billing models.</p>

### ***Risks of Using Generative AI***

The LSBC has also highlighted the following specific risks of using generative AI:

- *Plagiarism and copyright* – since generative AI tools are build using data inputs and continue to learn as more information is entered, some commentators have raised concern over copyright infringement of those data sources. While the LSBC raises this concern it merely states these issues fall outside matters upon which practice advisors can opine.

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- *Fraud and deep fakes* – like with any other technology, there are data security risks when using generative AI tools. In addition to common cybersecurity concerns such as hacking and phishing, there is also the potential use of generative AI to create deep fakes, and the fraud risks posed by the use of the technology in that manner. Lawyers are advised to be on guard against becoming the tool or dupe of an unscrupulous client or of others who may use deep fakes to circumvent security screenings.
- *Bias* – since LLMs are built to predict the next best possible word through the use of large data sets, there is a risk of bias in the results produced due to inherent bias in the data. Lawyers are advised to scrutinize any results from generative AI for potential bias in the text it provides.

### Alberta

The Law Society of Alberta ("LSA") has created a generative AI playbook intended to advise lawyers on how they can safely take advantage of the opportunities offered by generative AI.

#### **Application of Rules of Professional Conduct**

<b>Rule of Professional Conduct</b>	<b>Application to Generative AI</b>
<i>Duty of technological competency</i> – lawyers in Alberta have an obligation to develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities.	The generative AI playbook is intended to help lawyers meet this obligation. Competent practice requires an understanding of the risks as well as the benefits associated with technology.
<i>Confidentiality and security</i> – the Alberta rule of confidentiality is broad and requires continuing due diligence to hold in strict confidence all information concerning the business and affairs of a client throughout all aspects of a client relationship and beyond.	Any content uploaded to a generative AI tool, whether public or private, should be carefully considered. For example, uploading a document for refinement or proofreading means the content of that document is now available for the generative AI engine and the content could be used to train that engine or for other purposes thus risking its privacy. Once information has been uploaded, you may not be able to retrieve it.

#### **Risks of Using Generative AI**

The LSA has also highlighted the following specific risks of using generative AI:

- *Court requirements* – of note in Alberta is that the Alberta Courts have issued a notice to the public and the legal profession regarding the use of LLMs. The notice urged litigants to exercise caution when citing legal authorities or analysis derived from LLMs and emphasized that "it is essential that parties rely exclusively on authoritative sources such as official court websites, commonly referenced commercial publishers, or well-established public services such as CanLII" for any references to case law, statutes or commentary in representations to the courts. The notice also called for "humans in the loop" and stipulated that all AI-generated submissions must be verified by "meaningful human control" that cross-references reliable legal databases to ensure that citations and their content hold up to scrutiny.
- *Fraud and cybercrime* – generative AI can be used for criminal purposes such as impersonation and fraud. For example, using an AI speech generator, a sound bite can be taken from a voice mailbox greeting to impersonate that person.
- *Knowledge cutoff* – some tools such as ChatGPT have knowledge cutoff dates which means that events after this time will not be reflected in its responses. This may affect reliability of responses.
- *Hallucinations and legal research* – because generative AI tools are not tied to a foundation of truth or reality and are designed to provide creative responses to queries (so have been known to fill in gaps by making up names, dates, historical events and even legal cases), any lawyer using generative AI for substantive legal work must independently verify the information generated. They should never rely on generative AI to judge its own accuracy.

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- *Bias* – if input data is biased generative AI can produce content that is discriminatory, biased or that reinforces stereotypes. If lawyers are unable to assess generative AI systems for bias, they may inadvertently perpetuate stereotypes, violate human rights legislation and damage public trust in the justice system.
- *Copyright infringement* – if AI-generated outputs contain material that is identical or substantially similar to copyright-protected work, there is a risk that they infringe the original copyrights. To date, it is unclear who owns the content created by generative AI. Lawyers should understand this risk and ask providers whether models were trained using any restricted content.

### Saskatchewan

In February 2024, the Law Society of Saskatchewan ("LSS") released Guidelines for the Use of Generative Artificial Intelligence in the Practice of Law. The guidelines are based on existing professional responsibility obligations for lawyers and provide guidance on how to behave consistently with these obligations when using generative AI.

<b>Rule of Professional Conduct</b>	<b>Application to Generative AI</b>
<i>Competence and diligence</i> – a lawyer has a general duty to provide competent legal services. This includes a requirement for lawyers to ensure they understand, and have the ability to use, relevant technology. They must also understand the benefits and risks associated with using specific technology or choosing not to.	<p>One key concern is that outputs from generative AI may include information that is inaccurate, incomplete, outdated or otherwise inappropriate. Different tools will be more or less appropriate for different tasks (for example, general purpose tools like ChatGPT may not be designed or appropriate for legal research but tailored legal AI tools that were create with legal research in mind may have built in additional safeguards).</p> <p>Before using a generative AI tool ensure you understand how the technology works, its limitations, the applicable terms of use and other policies governing the use of client data by the product.</p> <p>Critically review, validate and correct both the inputs and outputs of generative AI. However, the duty of competence requires more than the detection and elimination of false AI-generated results. It requires the continuous application of legal reasoning and analysis regrading all potential options and impacts, including those that are included or omitted from or by AI tools.</p> <p>Lawyers must apply independent and trained judgment – 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. Supplement AI-generated research or arguments with human-performed research, critical analysis and review of authorities.</p>
<i>Confidentiality</i> – subject to certain enumerated exceptions, a lawyer has an ethical 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. Disclosure is permitted with a client's consent.	<p>Some generative AI products utilize inputted information, including prompts, 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 inadvertent disclosure</p>



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	<p>and/or inappropriate access to confidential client information by malicious actors. As such, consideration must be given to whether client confidentiality or privilege is lost as a result of using a particular AI tool.</p> <p>Different generative AI tools will pose differing levels of risk. Review the tool's terms of use or other information to determine how a generative AI tool utilizes inputs. If confidential and/or privileged information will be inputted, ensure that this information is not shared with third parties or utilized for the tool's own use in any manner, including to train or improve its product.</p> <p>Work with IT professionals or cybersecurity experts to ensure any AI system used has appropriate data security, confidentiality and retention protocols. If it does not, do not input any confidential and/or privileged client information (though the tool may still be adequate for tasks not involving such information such as creating marketing text).</p> <p>Anonymize client information. If that is not possible, seek the client's informed consent before using the generative AI tool. In obtaining consent, be candid about the potential reuse of information shared as well as the potential for the loss of privilege. Before seeking informed consent, lawyers 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 particularly sensitive information it may be better to avoid using the tool.</p>
<p><i>Compliance with the law</i> – A lawyer must comply with any applicable law when providing legal services and, 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 dishonesty, fraud, crime or illegal conduct.</p>	<p>These obligations apply to all aspects of a lawyer's practice, including the use of generative AI. There are many relevant and applicable legal issues surrounding generative AI, including, for example, compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws and cybersecurity concerns.</p> <p>Stay up to date on the applicable law governing generative AI use. This includes analyzing the relevant laws to ensure compliance when using generative AI tools.</p>
<p><i>Supervision and delegation</i> – managerial and supervisory lawyers have a duty to supervise junior lawyers, students and non-lawyer assistants. The Code of Professional Conduct 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</p>	<p>Whether using human or technological assistance, lawyers retain complete professional responsibility for all business entrusted to them and cannot inappropriately delegate tasks.</p> <p>Generative AI should be treated as equivalent to non-lawyer assistance, and its outputs should be reviewed for accuracy and</p>

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<p>judgment.</p>	<p>conformity with the lawyer's professional obligations. In all cases, lawyers should ensure that they apply their independent and trained judgment when acting for clients.</p>
<p><i>Communication</i> – lawyers have an obligation to communicate effectively with their clients, which includes that clients are properly informed about their matters and are able to provide instructions about their desired course of action.</p>	<p>Generative AI can perform certain tasks that clients would now typically expect their lawyers to do, such as initial drafting. Generative AI can also help with certain tasks that clients may not anticipate, such as, for example, suggesting lines of witness questioning. Effective communication may require that a lawyer explicitly inform a client about how generative AI is being used in their matter.</p> <p>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 misunderstanding and miscommunications with clients.</p> <p>Consider disclosing to a client if you intend to use generative AI in carrying out their representation. In some cases, disclosure will be the most appropriate course of action to ensure that you meet your professional responsibility to communicate effectively. Disclosure should include information about the benefits and risks of the intended generative AI use.</p> <p>Caution should also be exercised when using generative AI to assist with client communication.</p>
<p><i>Charging for work</i> – a lawyer is prohibited from charging fees that are not fully disclosed, fair and reasonable.</p>	<p>A lawyer cannot charge hourly fees for their time that do not reflect the time actually spent – if lawyers use AI tools to generate work product more efficiently, they cannot charge hourly fees reflecting the time it would have taken to generate the work product themselves. However, lawyers may charge for the actual time spent crafting and refining AI inputs and prompts and reviewing and editing generative AI outputs.</p> <p>Lawyers are permitted to enter into alternative fee arrangements, provided that they are fair and reasonable. They should not generate an inappropriate windfall arising from efficiencies created by using AI to perform certain tasks.</p> <p>The full disclosure requirement includes transparency about how the use of AI tools has impacted legal fees and a fee agreement must explain the basis for fees and expenses, including those associated with the use of generative AI.</p>
<p><i>Candour to the tribunal</i> – a lawyer acting as an advocate is obligated to treat the tribunal</p>	<p>It is important to be mindful of these obligations when using generative AI as the</p>

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<p>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.</p>	<p>outputs of these tools may include information that is inaccurate or incomplete. You should review all generative AI outputs for accuracy and correct any errors or misleading arguments before submission.</p> <p>Some courts in Canada (such as the Federal Court) require proactive disclosure of any use of generative AI when preparing submissions. Identify tribunal-specific expectations early as they may influence the decision to use generative AI or the manner in which it is used.</p>
<p><i>Discrimination, harassment and bias</i> – a lawyer is prohibited from discriminating against or harassing colleagues, employees, clients or any other persons.</p>	<p>Generative AI may be trained on biased information. Lawyers should engage in continuous learning about AI biases and their implications for legal practice.</p> <p>Lawyers 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, lawyers should ensure that using the tool does not put them in violation of their obligations not to discriminate or harass.</p>

### Manitoba

In April 2024, the Law Society of Manitoba ("LSM") issued the Generative Artificial Intelligence Guidelines for Use in the Practice of Law. These guidelines are intended to help lawyers learn about AI and its implications in legal practice and to assist lawyers in using generative AI in a manner consistent with the professional obligations set out in the Code of Professional Conduct.

<b>Rule of Professional Conduct</b>	<b>Application to Generative AI</b>
<p><i>Competence and quality of service</i> – 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.</p>	<p>Before using 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.</p> <p>If you are not careful and specific in the prompts you use, you may get results that are inappropriate or incomplete. It is thus crucial to critically review and validate the answers generate.</p> <p>Understand the risks of any tool you use. Some tools do not constantly update data so the answers they generate may be based on information that is no longer current. In addition, if tools cannot find an answer they have been known to "hallucinate" or make up information, including law, cases and citations. Because output may be inaccurate, incomplete, outdated, inappropriate or breach confidentiality, human oversight is essential. This is even the case for generative AI tools designed for legal</p>

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	<p>purposes which contain additional safeguards.</p> <p>Lawyers must apply independent and trained judgment when acting for clients. Professional judgment cannot be delegated to generative AI.</p>
<p><i>Confidentiality</i> – a lawyer must not divulge any information concerning the business and affairs of the client acquired in the course of a professional relationship. This information must be held in strict confidence and must not be divulged, subject to certain exceptions such as client consent.</p>	<p>Before using a generative AI tool, understand the product and consider whether confidentiality or privilege may be lost. Some products may use information inputted, 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 pose different levels of risk – some developers have taken significant steps to ensure data security while others have not.</p> <p>Even if a particular product does not share or otherwise use inputted information (or if you can opt out of the use of input information for training purposes), the tool may not have adequate security measures to prevent the disclosure of or inappropriate access to confidential information by malicious actors. Consult with an IT or cybersecurity expert to ensure any AI system you propose to use has appropriate data security, confidentiality and retention protocols.</p> <p>If confidentiality or privilege cannot be adequately protected by anonymizing client information, obtain the informed consent of your 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.</p>
<p><i>Discrimination, harassment, bias</i> – lawyers are prohibited from discriminating against or harassing colleagues, employees, clients or any other persons.</p>	<p>Generative AI may be trained on biased or discriminatory information. Take steps to ensure that any work product or internal 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 using the tool does not cause you to violate your obligation not to discriminate or harass.</p>
<p><i>Supervise</i> – lawyers have a duty to directly supervise work done by junior lawyers, students and non-lawyers and remain responsible for delegated work.</p>	<p>Treat generative AI tools as another delegation of work. Review the product AI tools produce, making sure it is accurate and conforms with your professional obligations. Always apply independent and trained judgment when acting for clients.</p>
<p><i>Treat tribunals with candour and respect</i> – when acting as advocates, lawyers are obligated to represent their clients resolutely and honourable within the limits of the law, while treating the tribunal with candour, fairness, courtesy and respect. This duty</p>	<p>Always review generative AI results for accuracy, including but not limited to, citations and any legal analysis and argument. Ensure that anything submitted to a tribunal is accurate, complete and appropriate.</p>

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<p>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.</p>	<p>The Manitoba Court of King's Bench has issued a practice direction regarding the use of AI in court submissions which requires materials to indicate how AI was used if it has been used in the preparation of materials filed in court.</p> <p>Be mindful that different jurisdictions and tribunals have different expectations about disclosing the use of AI in the preparation of submissions. These expectations should be identified early as they may influence the decision to use AI or the manner of its use.</p>
<p><i>Comply with applicable laws and rules</i></p>	<p>Many legal issues arise from generative AI, including compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws as well as cybersecurity concerns. Recent examples include the Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems introduced by Innovation, Science and Economic Development Canada in September 2023 and the Artificial Intelligence and Data Act which was introduced as part of the <i>Digital Charter Implementation Act, 2022</i>, (Bill C-27), and which has received second reading and is currently at consideration in committee in the House of Commons.</p> <p>These laws and rules are continuously evolving as the field of generative AI develops. It is important to stay current on the applicable laws governing generative AI to ensure compliance.</p>
<p><i>Honesty and candour</i> – 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.</p>	<p>This duty applies to the use of AI tools on a client's files. Since generative AI 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 explain 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.</p> <p>Exercise caution if using generative AI to assist with client communication (such as a client intake chatbot) and do not become overly reliant upon it. Without appropriate safeguards, using generative AI chatbots could give rise to misunderstandings and miscommunications with clients.</p>
<p><i>Reasonable fees and disbursements</i> – a lawyer must not charge or accept a fee or</p>	<p>In any proposed fee arrangement, be transparent about how the use of AI may</p>

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<p>disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.</p>	<p>affect legal fees and ensure clients understand the basis for fees and expenses, including those associated with the use of generative AI.</p> <p>Fee arrangements should not generate an inappropriate windfall for a lawyer arising from the efficiencies created by using AI to perform certain tasks. It is not appropriate to charge hourly fees reflecting the time it would have taken to generate work product without the use of generative AI. However, it is appropriate to charge for the time spent crafting and refining AI inputs and prompts and in reviewing, confirming, analyzing and editing generative AI output.</p>
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### Nova Scotia

In 2023 the Nova Scotia Barristers' Society ("NSBS") published a memorandum about artificial intelligence in the practice of law. While the memorandum does not contain formal guidelines like those issued in other jurisdictions, it does provide some guidance for Nova Scotia lawyers.

<b>Rule of Professional Conduct</b>	<b>Application to Generative AI</b>
<p><i>Competent legal services</i> – lawyers have a duty to provide competent legal services, which extends to technological competence.</p>	<p>Never defer to AI in the decision-making process, be mindful of the potential for bias, and be aware of potential privacy and intellectual property concerns.</p> <p>Tools such as ChatGPT are prone to hallucinations which generate imperfect or incorrect answers or even make up case law. As such lawyers are cautioned to double check any sources provided by generative AI and to remember that AI is not great at problem-solving or understanding concepts, especially when there is no 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 judgment.</p> <p>If you are going to use AI or other technology, you must know how to use it properly.</p>
<p><i>Confidentiality</i></p>	<p>Certain generative AI tools, such as the free online version of ChatGPT, are open-source and thus any information entered into the system is absorbed into the system as a way to help the computer expand its learning and potentially available to all users. As such, it is important to remember when phrasing queries that you should never refer to private, confidential or privileged information.</p>
<p><i>Efficiency</i> – lawyers are also subject to an obligation to provide efficient legal services.</p>	<p>If there is a sufficiently accessible, reliable and secure AI tool that can radically, or even materially, reduce the time that a lawyer takes to do a task, there is an argument that a lawyer's efficiency obligation mandates its use (or the use of similar tools).</p>

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In addition, the NSBS memorandum recommends lawyers consider the following questions:

- Based on the basic tenets of intellectual property, who owns the rights to any answers generated by generative AI?
- Do you have your client's consent to use AI in the preparation of documents or submissions on their behalf?
- 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?

The Supreme Court of Nova Scotia has also issued a statement cautioning those referencing legal authorities or analysis derived from generative AI in their submissions. This statement provides that, for all references to case law, statutes or commentary in representations to the court, parties must rely exclusively on authoritative sources such as official court websites, commonly referenced commercial publishers or well-established public services such as CanLII. It also requires any AI-generated submissions to be verified with "meaningful human control".

### Best Practices for Using Generative AI

Given the risks of using generative AI and the law society guidelines outlined above, lawyers who intend to use generative AI are advised consider implementing the following best practices:

- *Create an organizational policy* – law firms or corporate legal departments should consider establishing an organizational policy on what generative AI tools can be used, what the settings need to be, what tasks they can be used for and how any risks will be mitigated. Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI.
- *Proper due diligence before using a tool* – take adequate time to learn about the tools you are using, including the terms of service, product capabilities, product limitations, and product's data management, privacy and security protocols. Determine how the generative AI tool was trained.
- *Adjust security settings appropriately* – many tools that use generative AI have settings that enable the user to opt out of input data being used for training purposes or for third-party distribution. Ensure those settings are adjusted accordingly.
- *Continuing education and training* – consider taking training to familiarize yourself with generative AI in general or the specific products that you are contemplating using. This includes training on the ethical and practical aspects, and pitfalls, of generative AI use as well as potential AI biases. Remember also that the rules and laws with respect to generative AI technology are constantly evolving – it is important to keep current and adapt your practices so that they remain in compliance with any changes. Use available tools to guide your work. For example, the LSO has issued a generative AI checklist which can be referenced before employing a new AI tool or employing an existing AI tool in a new way.
- *Independently verify output* – generative AI is a tool that can help you produce work product, but it is ultimately your obligation to ensure the product is competently produced. A human being should verify output. Make sure it does not contain hallucinations. Consider whether there are any biases present in the output. Generative AI can supplement, not replace, your own professional judgment.
- *Protect confidential and privileged information* – use caution at all times. Do not input confidential or privileged information into generative AI tools without ensuring that adequate security measures are in place. Redact any identifying, sensitive or confidential information. Anonymizing input data may not be sufficient to protect this information as generative AI may be able to piece together information from the anonymized facts provided. If confidentiality or privilege cannot be adequately protected, explain the potential risks to your client and obtain informed consent before using the tool. In larger organizations, consider creating or purchasing an in house AI solution rather than using publicly accessible tools.
- *Chatbots* – given that, at present, client-facing chatbots that use generative AI can pose significant risks of misunderstandings and miscommunications, it is recommended that lawyers avoid using them unless they can be satisfied that appropriate controls are in place to ensure predictable and reliable outputs.

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- *Court requirements* – certain courts in Canada (such as the Federal Court of Canada and the Courts of Alberta, Manitoba and Nova Scotia) have issued practice directions or notices to the profession setting out proactive obligations for individuals using documents that have been developed using AI. Lawyers using generative AI and LLM enabled tools in the development of documents for filing in court need to confirm the court's individual requirements and ensure that they comply with those obligations.
- *Disclosing generative AI* – consider whether you should disclose to your clients that you intend to use generative AI in the provision of your legal services, particularly if your use will be disclosed publicly (e.g., in court), the client reasonably expects the material being prepared would actually be prepared by a lawyer, there are reputational or other risks to the client that could arise from the use of generative AI, or the use of generative AI will require inputting the client's personal or proprietary information. Disclosure of the use of generative AI may also avert the risk of inadvertent copyright infringement. Consider using watermarks to identify content generated by AI.

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