


TAB B



Licensee use of generative artificial intelligence

This 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 legal services empowered by generative AI. It is intended that this white paper, along with other Law Society resources, will encourage licensees to better understand generative AI and use it in an informed, productive manner. Licensees are also encouraged to review the practical guidance documents available in the Law Society's [Technology Resource Centre](#).

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Introduction

While conducting the outreach and research for the Trends Report, the Law Society of Ontario Futures Committee identified the proliferation and rapid evolution of generative artificial intelligence (AI) as a significant issue for licensees.

The increased use of generative AI products presents opportunities to provide more efficient services. All licensees are encouraged to experiment with these products and determine how they might be useful in their practice.

At the same time there are some risks involved in using generative AI for legal work, and it is important that licensees understand those risks and how to use generative AI in a manner consistent with their professional obligations. The risks vary based on what product licensees are using; what they are using it for; and what ability the licensee has to mitigate that risk. While the use of generative AI is encouraged, licensees do need to ensure that they are taking reasonable steps to mitigate potential risks.

This is a rapidly evolving area and new considerations will likely emerge as new tools with new technical capacities become available to licensees and as the general law applying to AI changes. To this end, if licensees have feedback on this paper they are encouraged to email policyconsultation@lso.ca.

Further, there is a wide range of products that use some form of generative AI, including both publicly available, general-purpose products and tailored products designed expressly for legal services. Available tools have vastly different safeguards. The discussion in this paper is deliberately general in nature, and it is incumbent upon users of these technologies to familiarize themselves with the software that they are using.

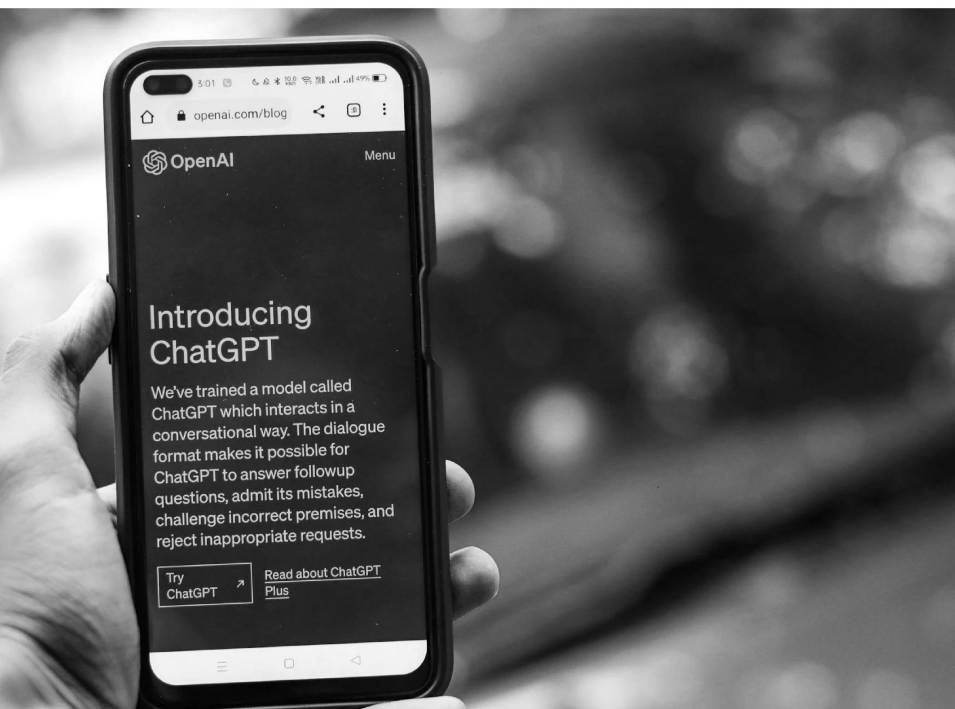
This paper is intended to help licensees as they navigate the use of generative AI tools. It is not intended to provide legal advice. If licensees have questions, they should consult the Law Society's Technology Resource Centre or contact the Law Society's Practice Management Helpline.

An overview of generative AI and LLMs

Generative Artificial Intelligence: Generative AI creates new content (text, code or other media such as music, art or photos) using generative models. 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): LLMs are a form of generative AI that creates text in response to prompts. 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.

The issues outlined in this white paper arise from using generative AI tools (in particular those which use LLMs) in the delivery of legal services.



Generative AI usage

Licensees are using generative AI to deliver legal services, manage their practices, interact with clients and deal with ancillary law firm requirements. Licensees currently use generative AI for a variety of tasks, including:



Basic legal research: Generative AI can be used to brainstorm for ideas including legal analysis. For example, generative AI tools can assist in analyzing case law and statutes and providing a quick overview of relevant legal principles.



Marketing: Generative AI tools can draft social media posts, and create content for advertisements, websites, presentations or greeting cards.



Editing of materials: Generative AI tools can make a paragraph or even an entire document more concise or provide alternative wording for any document drafted by a licensee.



Summarizing documents: Generative AI can summarize documents, including opposing parties' materials, case law, contracts and memoranda.



Drafting documents: Generative AI can be used to prepare first drafts of certain documents including memoranda, letters and even opening statements or examination questions.

Identified risks of generative AI usage by licensees

While generative AI presents great opportunities for licensees, there are a number of risks that licensees should consider when using generative AI. These risks include:

- 1. Unanticipated spread of confidential information:** Some generative AI tool providers may use inputs from users to train their tools or otherwise store or use inputs within their products. If a licensee inputs confidential client information or proprietary law firm information into a generative AI tool, there is a risk that it may inadvertently become public or be otherwise inappropriately shared with third parties. The extent of such risk will vary depending on the data security and storage measures used by a particular tool. In 2023, Samsung generated headlines after an employee pasted sensitive internal source code into ChatGPT to check for errors, raising concerns that the confidentiality of this information could be compromised.
- 2. Hallucinations and inaccurate information:** Generative AI tools can provide responses that include information that is fabricated or otherwise inaccurate but which appears authentic. For example, in US litigation, [Mata v. Avianca](#), two lawyers incorporated false citations that had been created by ChatGPT into court submissions. Similar occurrences have been reported in [Canadian litigation](#). In addition to outputting entirely fabricated information, generative AI tools may mischaracterize real data. For example, it has been asserted that ChatGPT will reference overruled law and conflate jurisdictions on a regular basis.

Although outputs from generative AI tools may be wrong, or even made up, they can often be presented confidently and in a compelling manner. Again, the risk of receiving fake or inaccurate outputs will vary depending on what tool a licensee is using and what the licensee is using that tool for.

Identified risks of generative AI usage by licensees

- 3. Bias:** Generative AI models can perpetuate existing biases present in the data it was trained on. The models learn from a diverse range of information, and if the data contains biased or prejudiced information, the model may generate biased or prejudiced responses.
- 4. Licensee-client relationship:** Many licensees increasingly utilize website chatbots for client intake. Many of these chatbots already use AI such as language recognition software. Some chatbots incorporate generative AI in order to attempt to make these interactions more efficient and personable. There are multiple examples of these types of chatbots responding in manners contrary to the companies' interest. See for example, reported instances [here](#) and [here](#). If adopted by licensees, this could present additional risks, including development of a licensee-client relationship without the licensee's knowledge or the provision of inaccurate or otherwise unexpected information.
- 5. Provision of legal advice by generative AI:** If generative AI is used to interact directly 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 upon it.

The Rules of Professional Conduct (RPC) and Paralegal Rules of Conduct (PRC)

Below are some of the rules of professional conduct that licensees need to consider when using generative AI. In addition, certain considerations and best practices have been set out for licensees to ensure that they are complying with their professional obligations.

a. Competence

Relevant rules	Related commentary or guidelines
RPC Rule 3.1-2 A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.	<p>[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.</p> <p>[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:</p> <ul style="list-style-type: none">(a) The lawyer's or law firm's practice areas;(b) The geographic locations of the lawyer's or firm's practice; and(c) The requirements of clients.
PRC Rule 3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal.	<p>19. To maintain the required level of competence, a paralegal should develop an understanding of, and ability to use, technology relevant to the nature and area of the paralegal's practice and responsibilities. A paralegal should understand the benefits and risks associated with relevant technology, recognizing the paralegal's duty to protect confidential information set out in Rule 3.03.</p> <p>20. The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the paralegal's practice and responsibilities and whether the relevant technology is reasonably available to the paralegal. In determining whether technology is reasonably available, consideration should be given to factors including:</p> <ul style="list-style-type: none">(a) The paralegal's or firm's practice areas;(b) The geographic locations of the paralegal's or firm's practice, and(c) The requirements of clients.

The RPC and PRC

a. Competence

Rule considerations when using generative AI

- **Risk of overreliance:** While generative AI can be a highly effective tool for many tasks, it may contain errors or hallucinations that can put a licensee or a licensee's client's reputation and interest at risk. It is important that licensees using any generative AI technology understand its limitations.
- **Need for basic literacy:** Licensees should take time to familiarize themselves with the generative AI tool that they intend to use so that they are familiar with the software's capabilities, risks and legal implications.
- **Choosing the right product:** There are many generative AI products available, and many more will likely emerge. Licensees should ensure that the chosen product is suitable for the task. For example, a generative AI software that may be useful in developing marketing materials may not be appropriate for basic legal research.

Best practices:

1. **Create an organizational policy:** Law firms should consider setting 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.
2. **Proper due diligence before using a tool:** Licensees should take adequate time to learn about the tools they are using, including the terms of service, the product capabilities, its limitations, its data management and security. This information can be used to identify and manage the risks outlined in this paper.
3. **Continuing education and training:** Licensees should consider taking a CPD or training module that will familiarize them with generative AI or the specific product that they are contemplating using.
4. **Verifying output:** Licensees are responsible for ensuring their work products are competently produced. Generative AI is a tool that can assist a licensee in producing such a product; however it is the licensee's express obligation to ensure that it meets that standard.

The RPC and PRC

b. Confidentiality

Relevant rules

RPC Rule 3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless (a) expressly or impliedly authorized by the client.

PRC Rule 3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and shall not disclose any such information unless (a) expressly or impliedly authorized by the client.

Rule considerations when using generative AI

- The developers of some generative AI tools may use inputs to train their AI or otherwise store or share that information with third parties. At the same time, some tools have more rigorous data security and privacy measures.
- This risk exists with respect to confidential information, law firm proprietary information and privileged information.

Best practices:

1. **Understand the privacy and data security settings:** Licensees should ensure that they understand the privacy and data security settings of the tool that they are using and its limitations. For example, 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. Licensees should ensure that those settings are adjusted accordingly.
2. **Protect confidential and privileged information:** Licensees should not input confidential or privileged information into generative AI tools without ensuring that adequate security measures are in place.
3. **Anonymizing is not perfect:** Even in instances where a licensee anonymizes input data, there may be residual risks. It may be able to piece together information from the anonymized facts provided.

The RPC and PRC

c. Supervision

Relevant rules	
RPC Rule 6.1-1 A lawyer shall in accordance with the by-laws (a) assume complete professional responsibility for their practice of law, and (b) directly supervise non-lawyers to whom particular tasks and functions are assigned.	PRC Rule 8.01 (3) A paralegal shall, in accordance with the by-laws, directly supervise staff and assistants to whom particular tasks and functions are delegated.

Rule considerations when using generative AI

- Licensees assume complete professional responsibility for their practice of law whether they receive assistance from non-licensees or technological tools. In all circumstances, licensees need to use their own active expert and independent judgment when providing legal services. If work is created using generative AI, it remains the responsibility of the licensee to ensure that it is their product and reflects their expert legal opinion.
- Licensees cannot inappropriately delegate tasks. Certain tasks require the input of a licensee and the application of their legal competence. Generative AI is not a replacement for this.

Best practices:

1. **Legal workplaces should have clear policies about AI use by licensees and other employees.** When work is delegated to a junior associate or other employee, those workplace policies should provide clarity as to when and in what circumstances generative AI can be used.

The RPC and PRC

d. Licensee-client relationship

Relevant rules	
<p>RPC Rule 1.1-1 "client" means a person who: (b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work; (and commentary).</p>	<p>PRC Rule 1.02 "client" means a person who: (b) having consulted the paralegal, reasonably concludes that the paralegal has agreed to provide legal services on his or her behalf and includes a client of the firm of which the paralegal is a partner or associate, whether or not the paralegal handles the client's work; (and commentary)</p>

Rule considerations when using generative AI

- Even if a person did not think they were in a licensee-client relationship it is possible that a generative AI chatbot, without proper controls, could potentially give a member of the public incorrect legal advice or lead to other misunderstandings.

Best practices:

1. Given that, at present, client-facing chatbots that use generative AI can pose significant risks of misunderstandings and miscommunications, it is recommended that licensees avoid using such chatbots unless they can be satisfied that appropriate controls are in place to ensure predictable and reliable outputs.

The RPC and PRC

e. Fees and disbursements

Relevant rules	
RPC 3.6-1 A lawyer shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.	PRC Rule 5.01(1) A paralegal shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

Rule considerations when using generative AI

- If a licensee is billing by the hour, they can only charge for the time actually spent by the licensee on the file, even if a generative AI tool has made the task much more efficient.
- Licensees can consider alternative fee arrangements as long as they are “fair and reasonable” and comply with the relevant rules and laws.

Best practices:

1. Licensees should ensure that any hourly billing accurately reflects the time spent on the task.

The RPC and PRC

e. Discrimination and harassment

Relevant rules	
<p>RPC Rule 6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.</p>	<p>PRC Rule 2.03(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.</p>

Rule considerations when using generative AI

- Generative AI may generate biased or prejudiced responses if the data it was trained on contains biased or prejudiced information.

Best practices:

1. **Mitigate biases.** When licensees are reviewing outputs from generative AI, they should consider whether there are biases present in the output.
2. **Comply with human rights legislation.** Licensees will want to review any internal uses of generative AI tools (for example in hiring) to ensure that they are set up in a manner that is compliant with human rights legislation.

Court requirements

Certain courts in Canada have issued practice directions or notices to the profession setting out pro-active obligations for individuals using documents that have been developed using AI or generative AI. Licensees 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.

The Federal Court has issued Notice to the Parties and the Profession on the use of Artificial Intelligence in Court Proceedings available [here](#).



Legal requirements

Licensees also need to be aware of, and comply, with relevant law applicable to generative AI. For example, in Canada there is, at the time of this writing the **Artificial Intelligence and Data Act** is being contemplated by Parliament.

The rules and laws with respect to generative AI technology are constantly evolving. This includes rules specific to generative AI as well as privacy regulation. It is important that licensees keep current and adapt their practices so that they remain in compliance with these changes.



Disclosing generative AI usage to your clients

Licensees should also consider whether they should disclose to their clients that they intend to use generative AI during the provision of legal services. There may be instances where a client would reasonably expect disclosure, or the effective communication rules would infer it. In determining whether to disclose usage to a client some of the **factors that licensees should consider include:**

1. Will the use of generative AI necessarily be disclosed publicly (for example if generative AI is being used in preparation of a court document before a court that requires such disclosure)?
2. Does the client reasonably expect that the material being prepared by generative AI would actually be prepared by a licensee?
3. Is there reputational or other forms of risk to the client that could arise from the use of generative AI?
4. Does use of generative AI require inputting of the client's personal or proprietary information?

Provision of legal services by generative AI

It is anticipated that some service providers will explore using generative AI to provide legal services directly to the public. For example, it is reasonable to assume that a program could use an LLM to draft a pleading or a demand letter for a self-represented litigant. Any such providers will raise the risks discussed in this paper; and they would likely also be contrary to the Law Society Act as the product/service they delivered would amount to legal services as defined in the Act.

The Law Society's existing Access to Innovation (A2I) Program allows approved providers of innovative technological legal services to operate in a regulatory "safe space" in Ontario. Applicants to the program are evaluated by the A2I team to ensure they meet the standards of the program to protect the public. The risks set out in this white paper present an additional set of risks to the public that the A2I program will need to factor into its evaluation criteria when processing applications that utilize generative AI.

Generative AI: Your professional obligations

Artificial intelligence (AI) has transformed the way lawyers and paralegals operate their practices and deliver legal services. While AI adoption is not recent, its ongoing impact on the legal profession remains dynamic providing more and more opportunities to streamline complex processes and enhance decision-making. Within this evolving landscape, generative AI has taken centre stage, offering innovative approaches and tools for licensees to deliver efficient legal services.

As licensees embrace this powerful technology, they must fully comprehend how generative AI intersects with their professional obligations to ensure compliance. This resource provides a summary of six key obligations licensees must consider when utilizing generative AI, along with practical steps to support adherence with these standards.

1. Duty of competence

- Section 3.1 of the *Rules of Professional Conduct*
- Rule 3.01 of the *Paralegal Rules of Conduct*
- Guideline 6 of the *Paralegal Professional Conduct Guidelines*

What does the duty require?

Licensees must perform any legal services for a client to the standard of a competent licensee as defined in the above Law Society rules. To maintain this standard, licensees should understand and be able to use technology that is relevant to the nature and area of the licensee's practice and responsibilities. Licensees should also understand the benefits and risks associated with any relevant technology integrated or used in their practice.

The required level of technological competence will depend on whether the:

- use or understanding of technology is necessary to the nature and area of the licensee's practice and responsibilities, and
- relevant technology is reasonably available to the licensee considering such factors as the licensee's or firm's practice areas, the geographic location of the licensee's or firm's practice, and clients' requirements.

How does using generative AI impact this duty?

Before using generative AI, licensees should familiarize themselves with its usage, understand its capabilities and limitations, and identify the potential risks associated with its application.

One of the unique powers of generative AI is that it can create new content from scratch, whether it be words, images, or sounds. If a generative AI tool does not have sufficient data to answer a prompt, it may fabricate or hallucinate information. This means that AI-generated content may not be true or reliable. Licensees must, therefore, take steps to ensure the accuracy of AI-generated information to maintain the required standard of competence.

Practice tips

1. Recognize that generative AI is a valuable tool but is not a substitute for exercising your own professional judgement. Ensure you take the steps necessary to critically analyze and understand the unique complexities of your client's matter and provide tailored strategic advice.
2. Take the time to understand how generative AI works, including its capabilities, limitations, and any standards or applicable terms of use. For example, OpenAI's [Usage Policies](#) explicitly notes that users should not provide tailored legal advice without review by a qualified professional and disclosure of the use of AI assistance and its potential limitations.
3. **Always** independently verify any information produced by generative AI that you intend to rely on. The verification process should be completed by a human being, not the AI system itself.
4. To help build, maintain, or enhance your technological competence, consider reviewing the free information, training videos, and tools on the Law Society's [Technology Resource Centre](#).

2. Duty of confidentiality

- Section 3.3 of the *Rules of Professional Conduct*
- Rule 3.03 of the *Paralegal Rules of Conduct*
- Guideline 8 of the *Paralegal Professional Conduct Guidelines*

What does the duty require?

Licensees must hold in strict confidence all information concerning the business and affairs of their clients, including privileged communications. Licensees also have legal obligations to protect their clients' privacy rights and must adhere to provincial and federal privacy laws and regulations.

How does using generative AI impact this duty?

Licensees must be mindful of what information they input or upload into a generative AI system. Depending on the AI tool used, this information can easily find its way into the public domain resulting in a potential breach of the licensee's duty of confidentiality. For example, uploading a factum for refinement or an agreement for proofreading into ChatGPT means the content of that document is now information available for the AI engine which could be used to train that engine for other purposes.

Practice tips

1. Review the terms of use for the generative AI technology you wish to employ. Ensure you understand the risks of using this technology and determine how it utilizes inputs. Many AI systems use these inputs to train or improve the AI tool.
2. Where the generative AI system lacks appropriate confidentiality, security, and retention safeguards, **do not** input confidential, privileged, or potentially identifying client information in the system.
3. Carefully consider what information needs to be provided in the generative AI system and redact any identifying, sensitive, or confidential information. If confidentiality or privilege cannot be adequately protected by anonymizing client information, explain the potential risks to your client and obtain your client's informed consent **before** using the tool.

3. Duty of honesty and candour

- Rule 3.2-2 of the Rules of Professional Conduct
- Rule 3.02 of the Paralegal Rules of Conduct
- Sections 1 to 3 of Guideline 7 of the Paralegal Professional Conduct Guidelines

What does the duty require?

Licensees have a duty of honesty and candour to all clients on matters relevant to their retainer. This duty requires that licensees inform clients of information known to them that may impact the client's interests in the matter.

How does using generative AI impact this duty?

With respect to the integration or use of generative AI, compliance with this duty will depend on several factors including:

- The generative AI technology used and the specific terms of use
- How and for what purpose the generative AI technology will be used in a client matter
- Whether the generative AI technology could impact the provision of legal services or outcomes
- Whether the generative AI technology will impact the cost of legal services provided
- The protocols and procedures put in place by the generative AI vendor and the law or legal services firm to minimize risk and ensure compliance with the Law Society's rules and by-laws.

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, licensees should inform clients about the use of such technology. In these situations, licensees should be prepared to explain to clients how they use the technology in their matter, any associated risks, and what steps the licensee is taking to mitigate same.

Practice tips

1. Review the list of factors above and the circumstances of each client matter and consider if you should disclose the use of generative AI to clients where you intend to use such technology to provide legal services in their matter.
2. Where disclosure is necessary, licensees should be prepared to provide information to clients about the benefits and risks of using generative AI technology, including any risks related to breaches of confidentiality.
3. If using generative AI chatbots, licensees should work with the AI vendor and IT specialists to ensure appropriate safeguards have been employed to avoid misunderstandings, misinformation, and miscommunications with clients.

4. Duty to supervise and delegate

- Sections 6.1 and 6.2 of the *Rules of Professional Conduct*
- Rule 3.02 of the *Paralegal Rules of Conduct*
- Sections 1 to 3 of Guideline 7 of the *Paralegal Professional Conduct Guidelines*

What does the duty require?

Licensees may delegate certain tasks to students, law clerks, junior licensees, and non-licensee employees to optimize their time and enhance the delivery of legal services. Where tasks are delegated, licensees remain responsible for all services rendered and all communications by and prepared by their employees. The extent of supervision required will depend on the task and the experience of the employee.

How does using generative AI impact this duty?

Using generative AI tools is akin to receiving assistance from a non-licensee employee. As with other non-licensee employees, licensees must properly delegate tasks and functions to the AI tool and should validate or confirm the accuracy and reliability of AI-generated information. In addition, licensees should provide clear guidelines to all employees on how generative AI is to be used in the workplace. This may include:

- providing relevant training to employees on the use of any generative AI technology, including its limitations, potential biases, and ethical pitfalls.
- specifying the permissible contexts for using generative AI and identifying what information should and should not be inputted into a generative AI system.

Practice tips

1. Generative AI should not be relied on to perform duties only a licensee can perform.
2. If you have employees (licensees or non-licensees) you should develop firm policies on the appropriate use of generative AI. For example, you may ask any students or junior associates to put an AI watermark on AI-generated material they submit to you for feedback.
3. Regularly review AI-generated content used in materials produced by employees by implementing a process to verify accuracy and compliance with firm policies and your professional obligations.
4. Inform employees on how the generative AI system processes sensitive information, stressing the need to protect client confidentiality and privileged communications.

5. Duty to charge reasonable fees and disbursements

- Section 3.6 of the *Rules of Professional Conduct*
- Rule 5.01 of the *Paralegal Rules of Conduct*
- Guideline 13 of the *Paralegal Professional Conduct Guidelines*

What does the duty require?

Licensees can charge clients for legal fees and disbursements provided the amount charged is fair, reasonable, and has been disclosed to the client in a timely manner. What is fair and reasonable will depend on several factors identified in the above Law Society rules and guidelines.

How does using generative AI impact this duty?

Leveraging generative AI for legal services may yield long-term cost savings for both clients and licensees. However, whether a licensee can pass on the cost of using generative AI or other technology to a client as a disbursement depends on the specific circumstances. An individualized assessment should be conducted to determine the feasibility and appropriateness of allocating such costs. Licensees are prohibited from accepting hidden fees.

Licensees who elect to pass on generative AI usage costs to clients as disbursements must also ensure the disbursement is:

- fair and reasonable in the circumstances
- disclosed to the client in a timely fashion, and
- billed at its actual cost rather than an estimated cost.

Before charging clients for generative AI usage, consider the following questions in the context of your fiduciary relationship and professional obligations:

- Will you charge clients for time spent reviewing and validating AI-generated content? If so, consider how this impacts fee estimates and the overall cost of legal services. Are these charges fair and reasonable in the specific context?
- Do your responses to the previous questions require that you inform the client about your or your firm's usage of generative AI technology, including the associated risks and costs?

Practice tips

1. Ensure that any disbursement charged is clearly and openly disclosed to the client in a timely manner.
2. Provide itemized statements of account that break down all fees and charges, including AI-related costs. You should also be ready to explain the basis of any AI-related disbursements charged to the client particularly if the client might not reasonably be expected to anticipate such charges.
3. If something unusual or unforeseen occurs that substantially affects the amounts charged, you should provide the client with an immediate explanation. This may include, for example, if a generative AI tool produces an incorrect or faulty result that you relied upon, leading to additional work.

6. Duty not to mislead the tribunal

- Section 5.1 of the [*Rules of Professional Conduct*](#)
- Rule 4.01 of the [*Paralegal Rules of Conduct*](#)
- Guideline 12 of the [*Paralegal Professional Conduct Guidelines*](#)

What does the duty require?

When acting as an advocate, licensees 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. Licensees 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.

How does using generative AI impact this duty?

Licensees 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. Staying proactive in monitoring these directives ensures you are well-equipped to adapt to the changing dynamics and leverage generative AI tools responsibly in your practice.

a. Ontario Courts

As of the date of this resource, no Ontario courts or tribunals have issued guidance on the use of generative AI in proceedings. There have, however, been a few notable cases identifying some of the benefits and risks associated with licensees relying on generative AI technology to advocate for their clients. These cases shed light on both the potential advantages and pitfalls of which licensees must be aware.

- [*Floryan v. Luke et. al.*](#) (2023 ONSC 5108)
- [*Cass v. 1410088 Ontario Inc.*](#) (2019 ONSC 6959)
- [*Drummond v. The Cadillac Fairview Corp. Ltd.*](#) (2018 ONSC 5350)

b. Federal Court

On December 20, 2023, the Federal Court of Canada issued the below guidelines and notice on the use of AI by both the court and parties. Among other things, the Federal Court notice 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. This information must be shared in writing in the first paragraph of each such document submitted. The Federal Court also urges caution when submitting documents that contain legal references or analytics that were generated by AI, noting it is crucial to use only well-recognized and reliable sources.

- [*Interim Principles and Guidelines on the Court's Use of Artificial Intelligence*](#)
- [*Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings*](#)

Practice tips

1. Comply with any tribunal guidelines or notices requiring the disclosure of generative AI use in court proceedings. Ensure all staff are aware of this information and are properly trained on when to use and not to use generative AI for litigation matters, and what steps they need to take to ensure compliance with court directives.

2. Thoroughly validate any content generated by AI systems before presenting it to the tribunal to ensure that AI-generated evidence, cases, or arguments are accurate and reliable. Keep a record of the steps you took to confirm the accuracy of this information.
3. Maintain detailed records of prompts, data sources, and any assumptions you made when using generative AI as evidence of your commitment to transparency and compliance with your obligations.

Generative AI: Your quick-start checklist

Generative artificial intelligence (AI) offers immense opportunities for lawyers and paralegals to expand their practice and enhance their service delivery to clients. But how do licensees wield the power of AI responsibly and in accordance with their professional obligations? This checklist provides a clear roadmap, offering practical steps and recommendations for integrating AI into legal workflows. Whether you are exploring the potential of generative AI, already using it, or seeking to optimize its usage, this checklist offers a structured approach from initial consideration to implementation of generative AI tools. By following these recommendations, you can effectively manage potential risks, protect your clients' interests, and ensure the responsible integration of generative AI in your law or legal services practice.

Note: Depending on the risks and safeguards related to different generative AI tools, you may not need to follow every recommendation listed. Licensees should exercise their own judgement in determining what steps are required in the specific circumstances of each situation.

BEFORE USING AI

☐ Perform vendor due diligence

- Assess the generative AI vendor's experience, reputation, reliability, financial stability, and compliance with legal standards including data security and privacy laws
- Consider creating or utilizing a checklist or questionnaire to gather essential information during your evaluation process

☐ Review the terms of service

- Thoroughly review the terms of service for the AI tool and identify potential conflicts with your professional obligations
- Understand the vendor's responsibilities in the case of data breaches, cyberattacks, or other risks of inadvertent disclosure

☐ Identify limits and capabilities

- Conduct thorough research and experiment with the AI tool to gain a comprehensive understanding of its capabilities and limitations
- Consider how easily the AI tool integrates with your existing systems or software

☐ Conduct testing and validation

- Determine *how the AI tool was trained** (e.g., ask the vendor for information regarding the source of the dataset, how the data was labelled and validated, and what algorithms were used to train the AI tool)
- Use this information to identify and mitigate data biases and other risks

☐ Assess competency and establish guidelines

- Evaluate your knowledge and proficiency in using the AI tool as well as your understanding of its advantages and potential risks
- Establish guidelines for utilizing the AI tool, ensuring that you and your employees have the requisite skills and information to navigate the tool competently and ethically

☐ Develop communication protocols

- Identify scenarios where transparent communication about AI tool usage with a client is required to manage expectations and mitigate risk. Specify instances in which informed client consent should be obtained
- Establish clear and well-defined communication protocols for discussing AI usage with clients

☐ Implement data safeguards

- Understand how the data you input into the AI tool is handled, stored, and protected
- Determine what security measures the vendor has in place to protect the AI tool from unauthorized access
- If necessary, establish additional protocols to protect confidential client information from inadvertent disclosure

☐ Evaluate billing practices for AI usage

- Decide whether to pass on charges related to AI usage to clients. If so, ensure the fee charged is fair, reasonable, and promptly disclosed to the client
- Any arrangement related to passing on AI usage charges should be clearly documented in writing and explained to the client

WHEN USING AI

☐ Incorporate a human verification process

- Integrate a [system or process](#)* of human verification to review AI-generated results and ensure their accuracy and reliability
- Identify tasks or legal processes where human judgment is critical, and the AI tool should **not** be employed

☐ Maintain an audit trail

- Establish a systematic process for recording all prompts and inputs you or your employees provide to the AI tool
- Regularly review the audit trails to identify potential risks, anomalies, or other issues and take proactive steps to mitigate same

☐ Prioritize client confidentiality

- Instruct AI users not to input prompts that could identify clients or specific legal matters
- Establish clear protocols for anonymizing or removing sensitive data used as prompts

☐ Provide ongoing training and solicit feedback

- Offer continuous training to AI users to ensure they utilize the tool in a manner consistent with your legal and professional obligations
- Gather regular feedback on the AI tool's performance, usability, and areas that require refinement or improvement

☐ Supervise AI usage by employees

- Educate AI users on appropriate prompts, including specifying which prompts to avoid. Emphasize the importance of maintaining confidentiality in all interactions with the AI tool
- Regularly monitor employee AI usage and consider implementing user permissions and access controls to limit input

☐ Avoid copyright infringement

- Ask the AI vendor about whether the tool was trained with any restricted copyrighted content and if so, review the terms of use relating to such content
- Exercise your own judgement when dealing with AI-generated content and ensure you contribute your own expertise and insights to the outcome

AFTER USING AI

☐ Evaluate performance and effectiveness

- Based on use, testing, and feedback, assess the impact of the AI tool on efficiency, accuracy, and productivity

☐ Document AI-generated outcomes

- Maintain a record of the outcomes generated by the AI tool making sure to record instances where the AI recommendations were hallucinations or based on false or fabricated data

☐ Conduct audit and compliance checks

- Conduct periodic compliance, ethical, and security audits to identify and address any vulnerabilities and to ensure ongoing compliance with your legal and professional obligations

☐ Stay current on AI developments

- Keep up with the latest developments in AI to ensure compliance with evolving legal regulations, ethical responsibilities, guidelines, and standards

*Note: Third-party resources referenced in this resource are for informational purposes only and do not constitute an endorsement or recommendation by the Law Society of Ontario. The Law Society does not control or guarantee the accuracy, relevance, or quality of the content from third-party resources.