

# **“AI AND LEGAL TECH UPDATE”**

**THE ADVOCATES’ SOCIETY**

**“TRICKS OF THE TRADE”**

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# INDEX

TOPIC	PAGE
Introduction.....	1
Overview .....	2
Threshold Considerations .....	4
AI Tools You Should Be Trying .....	6
AI-Assisted Legal Research Tools .....	7
ChatGPT and Related Generative AI Tools .....	9
Use of AI For Medical Questions.....	9
Drafting a List of Sample Questions / Support Ahead of Discoveries .....	12
Drafting Blogs or Other Marketing Content .....	15
Drafting Emails or Similar Content .....	16
Performing Math Calculations .....	17
Microsoft Copilot.....	20
Closing Call to Action.....	21

ATTACHMENTS	TAB
ChatGPT – “Tech Predictions Proven Wrong” .....	A
Law Society of Ontario Publications.....	B
Compendium of AI Commentary For Lawyers .....	C
Alexi Memo – Striking a Jury Notice.....	D
Alexi Memo – Apportionment of Negligence .....	E
ChatGPT – “Understanding FND” .....	F
ChatGPT – “Lisfranc Injury Research Advances” .....	G
ChatGPT – Questions to ask Cardiac Perfusionist.....	H
ChatGPT – “Nursing Demands: Cardiac Union” .....	I
ChatGPT – “Hog Finishing Economics Ontario” .....	J
ChatGPT – AI-Generated Images.....	K
ChatGPT – “Law Practice Math Aid” .....	L
ChatGPT – “Framing Two-Story Home Tutorial” .....	M
ChatGPT – “Water Cistern Pumps Overview” .....	N

Copilot – Memo to File summarizing meeting with client..... O

Copilot – Update to client following teleconference and ChatGPT

- “Hip Labral Tear: Diagnosis & Treatment” ..... P

## INTRODUCTION<sup>1</sup>

***"Television won't be able to hold on to any market it captures after the first six months. People will soon get tired of staring at a plywood box every night." - Darryl Zanuck, co-founder of 20th Century Fox, 1946.***<sup>2</sup>

I begin with the quote above because, for as long as there have been technological advances, people have wrongly believed they won't change anything. Artificial Intelligence ("AI") is not only here to stay, it is, plain and simple, a transformational game changer. You will either be left behind, or you will adapt and evolve. There is no middle ground.

I am a 58-year-old litigator called to the bar 30 years ago in 1994, so a fair question to pose would be why I have been asked to present a paper about best practices for incorporating AI into a legal practice. To be sure, I do not describe myself in any way as having a particular technological proficiency. I certainly am intellectually curious and believe that's all you really need to make use of AI in ways that are both imaginable and unimaginable with your own individual law practices.

My journey on this path began a number of years ago, when my law firm identified "digital leadership" as part of our strategic plan going forward. I happened to be on that Strategic Planning Committee, and, as often happens, the position of Chair of the newly-minted Digital Leadership Committee fell in my lap. This was still at a time when AI was way off on the horizon, and certainly not something that I was thinking would make its mark with my own practice.

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<sup>1</sup> This is a reworked version of a prior paper I first delivered to the Ontario Trial Lawyers Association in May 2024, updated for a LSO program in October 2024, and have revised again for Tricks of the Trade. For those of you who have previously heard me speak, my live talk at Tricks of the Trade will have brand new content.

<sup>2</sup> In writing this paper, I knew that I wanted to start off with a quote from someone in the past who turned out to be completely wrong in predicting that a technological advancement wasn't going to catch on. I had the idea, I just didn't have the content. So, to quickly find something, I used ChatGPT, giving it the following prompt: *"Give me three historical quotes from people who predicted that technological or mechanical advancements would never succeed, only to be later proven very wrong. The examples should be well-known enough that they have been referenced at least 10 times in recognized publications"*. See my entire chat, and a follow-up prompt, at **TAB A**. To ensure this wasn't just a hallucination, I then Googled this quote and saw that it indeed has been cited many times in many publications.



As we know, in November 2022, ChatGPT was released on the world, opening our eyes to the tremendous possibility that this powerful new technology might offer.

Our collective excitement immediately produced watercooler chatter about the perils and pitfalls of AI with notable examples of epic failures occurring within our own legal profession. The hallucination of case law, which was then submitted to the court as something to be relied on, was not one of the finer moments in the annals of legal history. While it won't be the last mistake, you must not let the pitfalls deter you from embracing AI in your litigation practice.

## OVERVIEW

As an overview comment, my suspicion is that our conservative legal profession has been slower than it should to embrace the opportunities that are presented by AI. I remain surprised at how few people who I speak to in our profession are readily adopting the new technologies in real time. The occasional epic failure seems to have scared off many folks from safely embracing AI as one very important tool in your legal practice toolbox and business of law toolbox.

My hope with this paper is to encourage you to take your own baby steps to explore, in a way that makes sense for you within your own practices, the unlimited opportunity that exists to make safe and efficient use of AI, while doing so within the parameters of the evolving Law Society of Ontario guidance. To that end, everyone should be aware of the following LSO publications, attached to my paper at **TAB B**:

- *Licensee Use Of Generative Artificial Intelligence*
- *Generative AI: Your Professional Obligations*
- *Generative AI: Your Quick-Start Checklist*

As with any consideration of technology in a legal practice, the primary goal in incorporating AI into a legal practice should fit somewhere within these considerations:

- increased efficiencies to drive productivity
- an enhanced client experience
- efficient and effective marketing of legal services

- improved analytical and data management
- automation of routine tasks that are currently performed by a staff member

That is to say, the goal with AI should be to serve the needs of your clients more efficiently and capably, to reduce pressure points for yourself with routine tasks in the practice of law, to aid your staff in being better at what they do, to have a better set of tools to analyze your practice, to promote yourself and find clients, and either to take your new-found time dividend to market yourself and bring in even more work, or to spend that time dividend on personal pursuits that are meaningful to you.

Don't just be persuaded by me that you need to embrace the technological change that AI brings with it. Be very aware that our own *Rules of Professional Conduct* were amended in June 2022, still not likely with ChatGPT or AI in its sights, but very likely related to things like CaseLines (now Case Center), virtual court appearances, virtual Discoveries, and virtual mediations. Nonetheless, Rule 3.1-2 of our own *Rules of Professional Conduct*, which is the general rule related to the competence of a lawyer, provides in the commentary that supplements the rule the following guidance about technology:

*[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.*

*[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:*

- (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.*

While there is not yet a standard of practice that requires the use of AI, that is probably coming, and sooner than many would think. It is simply not an answer, in my view, to sit on the sidelines and decide that one will let this technological change pass by without at least understanding it and perhaps adopting it.

## THRESHOLD CONSIDERATIONS<sup>3</sup>

Before adopting the use of any AI tools in your legal practice, it would be prudent to understand a few threshold considerations at the outset. One might decide to do that by simply asking ChatGPT the following question: *"What are the riskiest uses of AI in a Canadian law firm?"*

When I posed that question (first doing so before the release of the LSO White Paper I should add), I received a reasonable response:

*The use of AI in Canadian law firms can offer several benefits, such as streamlining document review, legal research, and improving efficiency. However, there are also potential risks associated with its use. Here are some of the riskiest uses of AI in a Canadian law firm:*

- *Data security and privacy: AI systems rely on vast amounts of data, including sensitive client information. There is a risk of data breaches or unauthorized access if proper security measures are not in place. Canadian law firms must comply with stringent data protection laws, such as the Personal Information Protection and Electronic Documents Act (PIPEDA), and must ensure that AI systems adhere to these regulations.*
- *Bias and discrimination: AI algorithms learn from existing data, including historical legal cases and judgments. If the training data contains biased information, it can perpetuate or amplify existing biases, leading to discriminatory outcomes. Canadian law firms need to be cautious about using AI tools that may inadvertently discriminate against certain individuals or groups.*
- *Ethical dilemmas: AI systems, particularly in complex legal matters, can raise ethical concerns. For instance, AI-powered chatbots or virtual assistants might provide incorrect or misleading legal advice, leading to potential harm to clients. Canadian law firms must ensure that AI tools are used responsibly and that human oversight is maintained to address any ethical dilemmas that may arise.*
- *Legal liability: The use of AI in legal decision-making processes can create challenges in determining legal liability. If an AI system makes an erroneous recommendation or decision, it may be challenging to attribute responsibility.*

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<sup>3</sup> I want to acknowledge my indebtedness to Lerner's then summer student, now articling student, David Zhang, who prepared a comprehensive research memorandum in August 2023 for the Lerner's Digital Leadership Committee, addressing AI usage guidelines. His work was an excellent starting point for my own understanding, and continues to inform much of what I have outlined in portions of this paper.

*Canadian law firms must carefully consider the implications of relying solely on AI systems for critical legal judgments.*

- *Transparency and explainability: Many AI algorithms, such as deep learning models, operate as black boxes, making it difficult to understand how they reach their conclusions. This lack of transparency can be problematic in legal contexts where decisions need to be justified and explained. Canadian law firms should carefully assess the transparency and explainability of AI tools and ensure that they can provide justifications for their actions.*

*To mitigate these risks, Canadian law firms should prioritize robust data security protocols, ensure diverse and unbiased training data, implement ethical guidelines for AI usage, maintain human oversight, and promote transparency and explainability in AI systems. It's important to note that while AI can be a valuable tool, it should complement the expertise of legal professionals rather than replace it entirely.*

From having done considerable self-study and accessing non-AI tools to inform myself, I might add the following to this list, some of which has also later been endorsed by the LSO White Paper:

- human oversight, responsibility, and accountability
- informed consent and client communication
- continuous evaluation and improvement
- awareness of federal, provincial, Law Society, and professional association guidance

While it is beyond the scope of this paper to provide you with all the content needed to fully assimilate and digest each of these points, attached at **TAB C** is a compendium of the current legislative guidance and judicial practice direction or professional association commentary related to the use of AI in a legal practice in Canada, which supplements the specific LSO guidance.

I only have about 10 minutes at Tricks of the Trade to speak to the room. My intent is to spend my time with a show-and-tell demonstration of three tools that I am currently using – ChatGPT (for which you could substitute any of the large language generative AI models; it just happens to be the one that I use the most), Microsoft Copilot, and an AI augmented docketing software tool called “Laurel”. Before you explore these or any other tools on your own, don’t rush to get there without first giving sober thought about each of the threshold considerations noted above. You really need to understand the implications of what you might be doing, particularly when it comes to maintaining the privacy of clients’ information and honouring judicial guidelines on the permitted use of AI, before you barrel ahead on a file.

I hope to give as many examples of real AI content as possible, so that you can let your own imaginations run wild in exploring these tools for yourself. Showing is telling!

## AI TOOLS YOU SHOULD BE TRYING

There is certainly no “one size fits all” approach to the use of AI in a legal practice. To the extent that I am using or will demonstrate any particular AI tool in this paper or at this conference, it is not meant to represent a definitive endorsement of that product, nor any sense of exclusivity with respect to that product. Each of you will need to find your own set of tools that works best with the particular type of law practice you run, and with the particular needs of your own individual clients. My experience is informed by my practice as a plaintiff personal injury lawyer. There is so much more that I have yet to explore, and it may well in fact be worthy of a future talk a year down the road, where I can expand on what I have learned and the newer tools that I have discovered or explored.

Generally, it will be fair for you to think of AI tools as a dichotomy where:

- the data resides outside of your law practice, where you must be very cautious about client data security and privacy; and
- those tools that exist within your office or as an enterprise module that don’t carry the same risks of a data breach or client confidentiality security leaks.

Depending on your preliminary assessment of the safety of the type of tool that you’re using, it may only permit you to use the tool in a generic manner about general matters, or you may feel comfortable analyzing and using actual client data.

With that in mind, here is a short list of the type of AI tools that you may wish to explore in your own legal practice, which I have been using:

- AI-assisted legal research tools
- ChatGPT and related generative AI tools:
  1. Generating blog content
  2. Medical inquiries
  3. Drafting sample questions / Support for Discovery prep
  4. Drafting emails

## 5. Math calculations

- Copilot and similar practice tools

## AI-Assisted Legal Research Tools

At my law firm, the very first AI tool that we explored, even before ChatGPT burst on the scene, was the use of legal research memo tools that were augmented by some form of AI. Our Digital Leadership Committee at my firm was drawn to the Canadian legal start-up that is now known as “Alexi”, which was incubated at what was then Ryerson University (now Toronto Metropolitan University). We wanted to explore this tool because it drew upon a reliable data set, being the published cases on CanLII and published Canadian and provincial statutes. We were also drawn to this product because of its Canadian origins, as distinct from the many U.S.-based tools that we felt would have more limited application here in Ontario. Lastly, it was valuable to us in knowing that it was not purely an AI-produced legal memo; rather, as we understood it, there was a fair degree of human oversight to ensure the soundness of the legal memo. We weren’t even thinking about the hallucination of cases which later emerged with ChatGPT, but, now knowing about the possibility for an AI tool to completely hallucinate a case that doesn’t even exist, the human oversight component continues to be a valuable asset of tools like Alexi or other related AI research tools that might be available from Westlaw and LexisNexis.

My co-presenter at Tricks of the Trade will be giving a live demo of Alexi as part of his speaking time, but let me outline in this paper my first use of a legal research memo that was prepared with the assistance of AI.

I was headed to a trial for a below-elbow amputee, where defence counsel had originally filed a Jury Notice, but now was telling me that he intended to move to strike his own Jury Notice. I think he (rightly) perceived that my client was going to garner a lot of sympathy before a jury, having lost his arm in a tug-of-war contest gone bad. While I was generally familiar with the law relating to the striking of Jury Notices, I wasn’t too familiar with the situation where it was the defendant who wanted to strike his own Jury Notice. I thought it was a good opportunity to have a memo prepared for me, using this new AI-informed tool.

The simple question posed was, *“What factors do Ontario courts consider, under rule 47 of the Rules of Civil Procedure, when a party seeks to strike its own Jury Notice?”*

I went on to give it a bit of a factual background, as that assists the AI tool in preparing a more tailored legal research memo.

Within 48 hours, I had received a memo with the answer that I felt was very helpful to me on my file. Attached at **TAB D** is the 15-page legal memo that was prepared.

I won't present every AI-assisted legal memo that I have obtained in this paper, but I do want to present another one because it was particularly helpful to me, given the timing involved.

I had prepared a detailed Mediation Memo for a significant head injury case that involved a minor. I had prepared my clients for the approaching mediation and had served my Mediation Memo. I was taking a short five-day vacation in New Orleans with my wife ahead of the mediation, planning to conduct the mediation two days after I had returned from my trip.

On day one of my vacation, the defence Mediation Memo arrived by email and I saw an issue raised that I had not anticipated in my own Mediation Memo, and which hadn't really been raised, to my knowledge, earlier in the litigation. The defence Mediation Memo addressed the risk that the minor faced for being contributorily negligent for his own failure to follow directions that had been given to him by his teachers. He was just six years old when injured, so I hadn't anticipated in advance any argument about contributory negligence in a teacher/student school-based negligence claim.

I was able to email our firm law librarian, who made the request for an Alexi research memo on my behalf. The question was, *"Are the courts ever prepared to apportion some degree of personal responsibility or contributory negligence to a minor, and if so, is there a cutoff age, below which the child is considered too young to be responsible and instead his care provider or the person supervising the child is the sole responsible party?"*

In less than 24 hours, I received my conclusion, only to find that the leading case was a 2016 decision from the Ontario Court of Appeal, where members of my own firm, defence lawyers, had in fact been on the losing side of that very argument. Within 24 hours, I received my answer and was able to carry on with my vacation, knowing that I could fully respond to this new issue by relying on a Court of Appeal authority that supported me. This was more than worth the couple of hundred dollars that that memo cost, which was in fact a disbursement in any event, and

reimbursable by the defendant on the successful conclusion of that case. Attached at **TAB E** is the legal research memo that was generated in response to my inquiry.

## **ChatGPT and Related Generative AI Tools**

ChatGPT is certainly not the only AI tool that is available for your use, but it was the first one to come to widespread attention, and it is one where I have gained a considerable degree of familiarity. In fact, I use it daily for professional and personal inquiries. For the purposes of this paper and my talk, I will spend a fair bit of time talking about how I have woven ChatGPT into my practice. It is not the only generative AI tool available but is certainly representative of what any similar tools can offer. When I refer to ChatGPT, you can likely view it as a proxy for any of the generative AI tools that are now available.

The first and most important foundational consideration with ChatGPT, however, is that this is not a tool that I consider safe to use with client-sensitive data. It fits under the first prong of the dichotomy I mentioned above. In any of my dealings with ChatGPT, I would never share any client information or related private details, and so its use is restricted to more generic supports that nonetheless remain very powerful during the life of a file.

## **Use of AI For Medical Questions**

I have been very pleased with the way in which ChatGPT is like my own private medical expert whispering in my ear. I make a big distinction between some of the cautions that have been offered by the medical community about using ChatGPT for personal medical diagnosis, and my use of it, which is to prime me for further research. While I do not exclusively rely on what ChatGPT tells me, I have grown comfortable prompting it in a way that gives me a great deal of confidence that I am heading in the right direction.

Take for the example a situation where a medical record contains an entry that is somewhat outside of my usual day-to-day experience. Below is the example of a short chat that I had when I saw “a moderate left occipital subgaleal hematoma” referenced in an MRI Report that was contained in hospital records produced following a motor vehicle collision. I asked ChatGPT to explain to me what that medical finding meant, and this is what it told me:



*A moderate left occipital subgaleal hematoma refers to a collection of blood that has accumulated between the skull bone and the tough outermost layer of the scalp (called the galea aponeurotica) on the left side of the back of the head (occipital region). Here's a breakdown:*

- 1. Moderate: This term indicates the severity or size of the hematoma. "Moderate" suggests that the hematoma is not minor but also not severe. It's of a noticeable size, but it's not large enough to be considered critical.*
- 2. Left occipital: This describes the location of the hematoma. The "left" side indicates the side of the head where the hematoma is located, and "occipital" refers to the back of the head.*
- 3. Subgaleal: This term specifies the location of the hematoma between the skull bone and the galea aponeurotica, which is a fibrous layer of tissue that covers the scalp.*
- 4. Hematoma: A hematoma is a localized collection of blood outside the blood vessels. In this case, it's specifically referring to blood accumulation in the subgaleal space.*

*In summary, a moderate left occipital subgaleal hematoma means there is a noticeable collection of blood beneath the scalp, situated on the left side at the back of the head, between the skull bone and the tough fibrous layer of tissue covering the scalp. This finding often occurs due to trauma or injury to the head, leading to blood vessel damage and subsequent bleeding into the subgaleal space.*

Being interested in determining whether this might be something that I could use in terms of the catastrophic impairment designation (a very specific and important test pertaining to my practice area that requires some evidence of intracranial pathology, but suspecting that it was not in fact an intracranial pathology), I simply asked it, *"Would this represent intracranial pathology?"*, and got the following response, which made complete sense to me:

*No, a subgaleal hematoma does not typically represent intracranial pathology. The hematoma is located between the skull bone and the tough outer layer of the scalp (galea aponeurotica), meaning it is external to the skull and brain. Therefore, it does not directly involve the brain tissue or the intracranial space.*

*However, while the hematoma itself is not within the skull, its presence may indicate trauma or injury to the head, which could potentially have caused other intracranial issues such as a concussion or more severe traumatic brain injury (TBI). If there are concerns about intracranial pathology, further evaluation such as neurological examination or imaging studies may be necessary to assess for any associated injuries to the brain itself.*

The next example I want to share is using AI to provide me with language that helps me to be more persuasive when trying to settle a case with an adjuster or defence lawyer. In my world,

one of the challenges I frequently encounter relates to an “invisible injury”, one where it is impossible to see evidence of the problem on an x-ray screen or MRI.

There is no better example of this challenge than when I am confronted with a case that presents as “a psychogenic manifestation of injury” or “a somatoform disorder”. The updated medical terminology for this is a “functional neurological disorder”. I always struggle to persuade a skeptical defence lawyer or adjuster that the pain and suffering experienced by one of my clients who has been diagnosed with functional neurologic disorder is no less profound than if the complaint originated from an orthopaedic or pure neurological disorder. Attached at **TAB F** is one of my chats with ChatGPT, asking it to first explain “functional neurological disorder”, then to provide the prognosis for recovery following such a diagnosis. I then followed-up with a request that it draft me a 500-word argument that attempts to persuade a skeptical person that someone who suffers from functional neurological disorder experiences real distress and isn’t faking it. You will see the detailed response in the attachment that accompanies this paper.

What I then did – and it’s an approach that I commend to any of you exploring this tool - is to ask it to explain the same thing again, but this time using the voice of Ernest Hemingway.<sup>4</sup> I can tell you that I used that Ernest Hemingway commentary during a mediation that took place in one of my cases. I attributed the commentary completely to ChatGPT, and then did my own dramatic reading, in the voice of Ernest Hemingway, during the virtual mediation, to pretty good effect with both the defence lawyer and the instructing insurance professional. That case was successfully settled, and I won’t really know the extent to which my Ernest Hemingway reading played a role, but I strongly suspect that it aided my overall advocacy that day.

I recently used ChatGPT to give me a *de facto* medical opinion on a *Simplified Rules* case where I thought it made sense, considering the time delay and the cost of an expert report. I wanted to bolster my settlement position and persuade the insurance adjuster, who had asked me for a settlement proposal, about the seriousness of my client’s injury, just based on my offer to settle and the supporting ChatGPT attachment.

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<sup>4</sup> You can choose any historical voice that might be relevant, from Winston Churchill, to a motivational speaker, to Atticus Finch. By playing around, you will get the same argument delivered with a different style and tone until you find the right fit for your case.

The injury in question was a Lisfranc fracture-dislocation. I had done an entire trial in a medical negligence case related to that injury, so I had my own very well-developed sense about this injury, which gave me a lot of confidence when using ChatGPT to bolster my arguments. Attached at **TAB G** is the excerpt from ChatGPT which described the Lisfranc injury and the general rehabilitative initiatives that are prescribed. I shared this with the tort adjuster, avoided the delay and cost in having a formal expert report prepared, and did settle that file.

In my experience, it is very helpful to prompt ChatGPT with the further qualifier of asking it to explain something to you *at a PhD level*. On other occasions, I have asked it to restrict its advice to information that appears in peer-reviewed medical journals. You can insert your own parameters and guardrails with your prompt to ensure that it is only drawing upon reliable information in supplying you with a response. Remember that generative AI tools are only as good as the background information on which it has been fed. The paid version of ChatGPT which I use also provides the background source for much of the scholarly content, and I am also careful to back-check the sources for anything that is beyond my own personal knowledge base.

### **Drafting a List of Sample Questions / Support Ahead of Discoveries**

Another use for something like ChatGPT is to have it provide you with a list of questions that you might consider asking either your own client or the opposing party, depending on the type of case before you. While you would never use this as your sole source for preparation, it is a very handy tool in your toolbox. Simply to illustrate its power, I created a fictitious file where I assumed that I was involved in an LTD action for a cardiac perfusionist, a job which I readily admit I don't know very much about. I gave ChatGPT the following prompt:

*I am a lawyer who will be questioning a cardiac perfusionist. Give me a list of 100 questions that I can ask the perfusionist which will help me to understand exactly what this job entails, the level of responsibility assumed in the workplace by a perfusionist, the physical demands associated with this position, the necessary educational and on the job training that is required, and related inquiries.*

See the list of 100 sample questions that ChatGPT gave to me within 30 seconds of being prompted to do so, which is attached at **TAB H**. Not all of this is useful, but if just 20% of the generated content makes you think about your case, or simply speeds up what you would do on your own, there is a real value to you, your practice, and your client.

Note that you can engage in lengthy discussions in which you ask follow-up questions. For example, related to the perfusionist, I then asked, “*What are the educational requirements to work as a perfusionist in Ontario?*”, and I then was provided with this response:

*In Ontario, Canada, the educational requirements to work as a perfusionist typically include:*

1. *Completion of a bachelor's degree in a related field, such as biology, physiology, chemistry, or a health sciences discipline.*
2. *Graduation from a recognized perfusion education program, accredited by the Canadian Society of Clinical Perfusion (CSCP) or equivalent accreditation body.*
3. *Clinical training through an accredited perfusion program, typically consisting of supervised practical experience in a hospital setting.*
4. *Certification by the Canadian Society of Clinical Perfusion (CSCP) or equivalent certification organization, such as the American Board of Cardiovascular Perfusion (ABCP).*
5. *Continued education and professional development to maintain certification and stay updated on advancements in the field.*

*It's essential to verify specific requirements with the regulatory body or professional association governing perfusion practice in Ontario for the most accurate and up-to-date information.*

You can use this as a tool to help prepare yourself when dealing with a new client who has some aspect of their profile that falls outside of your prior experience and exposure. Similarly, you can use this as a valuable tool, depending on the type of case you are involved in, in better understanding aspects of the defendant or group of defendants.

I acquired an existing file from a prior lawyer when she developed a conflict. My new client is a nurse who worked on the surgical cardiac floor. She has a head injury and can no longer work. I saw that there was no physical job demands analysis in the file, so I asked ChatGPT:

*Give me a 1,500-word report that documents and explains the physical job demands, duties, responsibilities, and work conditions of a unionized cardiac surgical nurse working in Ontario.*

The response that was generated, attached at **TAB I**, was so helpful to me on my file. I shared it with the treating occupational therapist, but, more importantly, I shared it with my client, who offered some modest clarifications, before endorsing its accuracy, and saying, “*I like this tool by the way. Way easier than me trying to recall everything*”.

As another example, I had to examine at a Discovery the owner of a construction company while acting on behalf of a client who had slipped and fallen on soil that had washed onto the sidewalk in the subdivision (that had not yet been assumed by the municipality). No sod had been laid in the area of his fall. To ensure that I had a complete list of all soil erosion control strategies that could have been employed, ahead of the Discovery, I gave this prompt to ChatGPT:

*Give me examples of best practices for a land developer to minimize the risk of soil erosion and soil movement onto a sidewalk, after construction is completed and before sod has been laid.*

The list of ten different strategies included several that had not occurred to me:

*To minimize the risk of soil erosion and soil movement onto sidewalks after construction and before laying sod, land developers can employ a variety of best practices. These practices are designed to stabilize the soil, manage water flow, and protect the bare ground. Here are some effective strategies:*

- 1. Temporary Vegetative Cover: Before sod is laid, temporary seeding of fast-growing grasses or other cover crops can stabilize the soil. This vegetation helps to anchor the soil with its roots and provides coverage to reduce the impact of raindrops that can cause erosion.*
- 2. Mulching: Applying mulch over exposed soil can significantly reduce erosion. Organic mulches like wood chips or straw not only help retain soil moisture but also protect against the kinetic energy of falling rain.*
- 3. Erosion Control Blankets: These are specially designed fabrics composed of natural or synthetic materials that can be laid over the soil to prevent erosion. They are particularly useful on slopes where the risk of soil movement is higher.*
- 4. Silt Fences: Installing silt fences around the perimeter of the development area can prevent sediment from moving onto sidewalks and into drains. These fences are made from a porous fabric and are anchored into the ground to trap sediment while allowing water to flow through.*
- 5. Proper Drainage Planning: Ensuring that there is adequate drainage to manage stormwater runoff is crucial. This includes designing and implementing swales, ditches, and catch basins to direct water away from construction areas and towards designated drainage areas.*
- 6. Retention Ponds: Creating ponds or other water retention systems can help manage large volumes of water, especially after heavy rains, reducing the flow rate and volume of water that can cause erosion.*
- 7. Phased Construction: Implementing a phased construction plan where land exposure is minimized and areas are stabilized sequentially can reduce the risk of soil erosion across the entire site.*
- 8. Use of Geotextiles: Geotextiles can be placed under the top layer of soil to strengthen the soil and improve stability. They also promote water filtration while preventing soil from moving.*

9. *Regular Maintenance: It's important to monitor erosion control measures regularly, especially after rainstorms, and to repair or replace them as necessary to ensure they continue to function effectively.*
10. *Education and Training: Ensuring that all construction personnel are aware of the importance of erosion control and are trained in implementing these measures can lead to better adherence to best practices on-site.*

When it came time for the Discovery, I was able to go through these, one by one, and have the witness confirm that he could have, but did not, adopt a single one of these strategies, really making for a successful liability examination.

As a further example, outside of my practice area and created strictly for the purpose of this paper, let's assume that I am being retained by an Ontario-based hog producer, perhaps in a fire loss case, or perhaps in some kind of shareholder dispute. If I've never had such a case before and want a backgrounder, even before I meet with my potential new client, I could pose this question:

*Give me a detailed outline of the economics of operating a hog finishing operation in Ontario, with reference to professional associations, the daily and weekly course of a hog operation, its marketing, profitability, and likely economic risks.*

See the answer at **TAB J**, which would be the start, rather than the end point, in understanding this industry.

## **Drafting Blogs or Other Marketing Content**

As another aide to your practice, perhaps more on the marketing side, you might consider enlisting ChatGPT to assist you in writing the first draft of a blog, that you would then polish, finalize, and later share with clients or the public.

Also consider the powerful AI image-generating tools. See **TAB K** for some of the AI-generated images that I have used in blogs that I have prepared and published (again, relating to my personal injury practice area).

## Drafting Emails or Similar Content

Another potential use for ChatGPT (or Microsoft Copilot, which I discuss in more detail below) is to have it do a first draft of an email for you, again being careful not to include any client-identifying information that could get released inadvertently. I tested this out in connection with an email that could be sent by a university student seeking accommodation due to an illness – in this case mono. I gave it the following prompt, and it drafted up what I thought was a credible email that could be used, which is shown below:

*I am a first year university student. I contracted mononucleosis in the first part of October. I have missed four weeks of classes. Draft an email that I can send to each of my professors that inquires of them the extent of any accommodations they can offer to me if I return to class to try to complete my semester. I have a desire to complete my classes rather than drop them, but only if I have academic accommodations that would allow me to catch up given the number of classes and assignments that I have missed.*

*Subject: Request for Academic Accommodations Due to Illness*

*Dear Professor [Professor's Last Name],*

*I hope this message finds you well. I am writing to inform you of my recent medical condition and the impact it has had on my ability to attend classes and complete assignments. I am currently a first-year student in your [Course Name] class.*

*In early October, I was diagnosed with mononucleosis, which has led to my absence from classes for the past four weeks. I understand the importance of regular attendance and am committed to catching up on the material and assignments to successfully complete the semester.*

*I would greatly appreciate it if you could inform me of any accommodations or options that may be available to assist me in making up for the missed classes and assignments. I am determined to put in the necessary effort to meet the course requirements, but due to the extended absence, I believe some accommodations would be essential for me to achieve the desired outcomes.*

*If there are any specific guidelines or recommendations you have for students in similar situations, please let me know. I am open to discussing this further with you to ensure that any accommodations are aligned with the course expectations and objectives.*

*Thank you for your understanding and support during this challenging time. I look forward to your response and any guidance you can provide to help me navigate this situation successfully.*

*Sincerely,*

*[Your Full Name] [Your Student ID] [Your Contact Information]*

You can prompt ChatGPT to make the tone more formal, or less formal, or any other parameter, and it will instantly provide you with another draft to consider. This is also the sort of thing that a tool like Microsoft's Copilot, which I discuss below, is designed to do.

I recently prompted ChatGPT to prepare a 300-word pitch to sell a 2017 Mercedes C-300 and was pleasantly impressed with the content that was created. I have to admit it was better than what I would have come up with on my own.

### **Performing Math Calculations**

In my own practice, I have effectively used ChatGPT to assist with accurate calculations of a client's net recovery, after payment of fees and HST, during settlement discussions.

With the mandatory form of Contingency Fee Agreements now in place, where the fee percentage is calculated on everything, including the partial indemnity cost contribution, and only excluding the disbursements, it is a straightforward calculation that ChatGPT can perform for you. I use this in real time, during a mediation, so that I can quote an accurate amount to my client as their net recovery, with each offer that gets exchanged, without fear that I've made an error.

For this talk at the Tricks of the Trade, I wanted to share an example of something that might arise in other practice areas. I prompted ChatGPT as follows:

*Give me three examples of how ChatGPT could be used in a law practice to simplify math calculations.*

I received this response:

*Certainly! Here are three examples of how ChatGPT could be utilized in a law practice to simplify math calculations:*

- 1. Present Value Calculation for Future Damages: In personal injury cases, calculating the present value of future damages, such as future medical care or lost earning capacity, requires understanding of discount rates and the time value of money. ChatGPT can assist by quickly computing these present values based*



*on the provided discount rates and time periods, ensuring accuracy in complex calculations and saving time for attorneys.*

*2. Apportioning Settlement Amounts Among Multiple Plaintiffs: When a settlement involves multiple plaintiffs with different degrees of injury or damage, ChatGPT can help by accurately apportioning the settlement amount based on pre-determined ratios or percentages. This can be particularly useful when dividing lump-sum settlements or structuring periodic payments.*

*3. Calculating Economic Losses in Business Disputes: In cases involving business disputes, such as breach of contract or lost profits, ChatGPT can aid in calculating economic losses by analyzing financial data, projecting future losses based on historical trends, and applying appropriate interest rates for past due amounts. This can streamline the preparation of detailed damage reports, reducing the need for manual number crunching.*

*These applications can help legal professionals perform complex mathematical tasks more efficiently, allowing them to focus on the strategic aspects of their cases.*

I then asked for it to give me a specific fictitious outline for the third example, to illustrate what this might look like. See the fictitious example attached at **TAB L** which illustrates how economic losses could be roughly calculated in a business dispute – not to replace your expert, but to perhaps give some direction to the litigation in its early stages. The caveat here, as mentioned several times now, is that you would not want to feed any client-identifying information into ChatGPT.

I am constantly back-testing this product to make sure that what it generates is accurate. It isn't always accurate, so be extremely mindful that this is not an all-powerful oracle. Don't ever substitute your own review, good judgment, and further research for an AI-generated answer.

See, for example, the exchange below, where ChatGPT failed at what I would have thought was an easy task. I asked ChatGPT to give me all the two-syllable names of the Stoic philosophers.

It said:

*Here are the names of Stoic philosophers that have two syllables:*

- 1. Zeno (of Citium)*
- 2. Cleanthes*
- 3. Seneca*
- 4. Musonius*

*These names adhere to the two-syllable rule when pronounced in English.*

So I said, *“Explain to me how Seneca is two syllables and not three syllables?”*

*You’re correct to question this. In English, the name “Seneca” is typically pronounced with three syllables: Sen-e-ca (ˈsɛnɪkə). My earlier inclusion of Seneca in the list of two-syllable names was an error. I apologize for the mistake.*

*So, “Seneca” indeed has three syllables, and it should not be included in the list of two-syllable names of Stoic philosophers. The correct list of two-syllable names would be:*

1. Zeno (of Citium)
2. Cleanthes
3. Musonius

*These names are accurately two syllables when pronounced in English.*

I then went on to point out the same thing about Cleanthes and Musonius, before also noting that Cato is a two-syllable name that wasn’t offered at all. After the entire exchange, ChatGPT said:

*Yes, you are absolutely right. Cato is another Stoic philosopher whose name has two syllables. Specifically, we are referring to Cato the Younger (Marcus Porcius Cato Uticensis), who is well-known for his Stoic beliefs and his role in Roman history.*

*So, the corrected list of Stoic philosophers with two-syllable names would be:*

1. Zeno (of Citium)
2. Cato (the Younger)

*These names correctly meet the two-syllable requirement. Thank you for pointing that out!*

See a more successful back-testing exercise (attached at **TAB M**) where I asked ChatGPT to give me a tutorial on how to frame a residential two-storey home in Ontario, Canada – a subject that I know nothing about. I was showing ChatGPT to an acquaintance, who is a home builder. He could not believe the level of accuracy and the step-by-step detail provided, endorsing this as a very suitable explanation. He was so enticed already, he asked me to help him solve a real problem he was facing, leading me to give the following prompt (with the response attached at **TAB N**):

*Describe for me the various pumps that can be used in a water cistern at a residential dwelling in Ontario, Canada.*

He has become a convert himself and plans to use ChatGPT to assist him in his world of home building.

## **Microsoft Copilot**

Copilot is just one of multiple AI legal assistants that you might consider using. Copilot is the Microsoft AI tool, so anyone working in a Microsoft environment (which would certainly apply to many lawyers and law firms) should explore how Copilot may be useful in their own individual practices. Copilot, unlike ChatGPT, is an enterprise tool, meaning that it resides within the firm and can safely be used in analyzing client-sensitive data and documents. My own understanding of Copilot is still developing, and so anything that I will outline below is just scratching the very surface of what it might be able to offer you.

My first introduction to Copilot was using it as an assistant during Microsoft Teams videoconferencing meetings. There is a function that allows me to record and transcribe a videoconference. Copilot is then able to summarize that videoconference. I began exploring using Copilot as a tool to prepare a memo for my own benefit following internal non-billable videoconference discussions. This quickly led to me seeing its value and using it, always with the client's knowledge and permission, for client-related matters. As an excellent example of Copilot being such a time-saving tool, see the Memo to File that is attached at **TAB O** which summarized a nearly one-hour videoconference that I had with a client of mine, a woman in her late 20s, who suffers with post-concussion complaints, following a motor vehicle collision, which impedes her ability to function properly in her job as an accountant. I did not have to type my own notes or dictate my notes, and all my assistant had to do was to file this memo in our file. I was also able to send this memo to my client within five minutes of the meeting having ended, so that she had a real time record of what we discussed as well.

Whenever I have talked to defence lawyers who do LawPRO work, they always tell me how challenging it is to defend their lawyer clients who frequently have failed to document any of the advice that has been given to the client during the life of a file. If for no other reason than having a proper memo in place to confirm advice that was given and information received from a client, you could do much worse than using one of these AI tools to prepare your memos for you.

The full suite of tools available for Copilot includes Copilot operating in Word, with Excel, with PowerPoint, and with your Outlook email box. I have been blown away by Copilot's ability to take a paper I have written and then produce the first draft of a PowerPoint presentation. In Outlook, as mentioned above, you can have Copilot assist in drafting emails. You might consider doing a first draft and then have the tone changed to be more professional, more casual, or more detailed.

As another example of client communication, see the attachment at **TAB P** that relates to an update following a motorcycle accident. There is an update on work status and next steps. I was also able to double-down on the use of AI because this client was concerned about an undiagnosed labral tear of the hip, so I included a quick chat from ChatGPT to help educate both my client and myself as to what might be in store in her future related to that undiagnosed injury.

You could expand the use of Copilot or similar tools to members of your admin team, say your accounting department, by having a tool like Copilot analyze data that it is fed relating to the productivity of your files or comparisons of Excel spreadsheets, or the most productive day of the week for you over the course of a year. Admin support tasked with marketing could use Copilot to prepare content for your review and approval. A clerk could use Copilot to generate a PowerPoint slideshow, or at least use it as the first step in preparing that slide deck.

AI can do a lot of things, but what it can't do is demonstrate the creativity and ingenuity that the lawyer is able to conceive. You get to dream, and dream big, and then have AI tools fulfill those dreams.

## Closing Call to Action

Just for fun, I thought I'd delegate the concluding remarks in this paper to ChatGPT, so I prompted it like this:

*Write me a 300-word concluding statement for a paper being presented to a group of litigation lawyers that is meant to inspire them to adopt AI tools in their legal practice. The existing paper has addressed in detail AI-related legal research tools, ChatGPT and generative AI, and AI legal assistants, like Microsoft's Copilot. When discussing generative AI, the use of AI to answer medical questions, the use of AI to inform a lawyer about a client's business or economic model, the drafting of blogs and creation of AI images for marketing purposes, the drafting of emails, and the performance of math calculations in a business dispute, have all been*

*illustrated and discussed in the paper. Prepare this statement in the voice of Atticus Finch.*

Here is the call to action that was generated:

***Concluding Statement in the Voice of Atticus Finch:***

*Ladies and gentlemen, as we conclude our discussion today, I am reminded of a simple truth: the law, in its essence, is a pursuit of justice and truth. Our tools may change, our methods may evolve, but our core mission remains steadfast. The introduction of AI into our practice is not a departure from our principles; it is an extension of them.*

*These AI tools—whether for legal research, client understanding, or even crafting the words we use—offer us the opportunity to do our work better, more thoughtfully, and with greater precision. They allow us to serve our clients with the thoroughness and care they deserve, to understand their needs in a way that goes beyond the surface, and to address the complexities of their cases with a clarity that is, frankly, revolutionary.*

*But these tools are not a substitute for our judgment, our ethics, or our commitment to doing what is right. They are, instead, a means to amplify the qualities that have always defined great lawyers: diligence, integrity, and a deep sense of justice. As we embrace these innovations, let us do so with the understanding that they are here to help us fulfill our most fundamental duty—to seek the truth, to serve our clients, and to uphold the law. The future is here, and it is ours to shape with wisdom and care.*