



Law Society PEI Artificial Intelligence Guidelines

Contents

- Introduction.....3
- Interpretations4
 - Definitions4
 - Professional Responsibility Considerations4
- Duties of Competence5
- Duty of Confidentiality.....5
- Duty to Supervise and Delegate6
- Duty of Communication: Considerations of Quality of Service and Honesty & Candour6
- Duty to Charge Reasonably7
- Duty of Candour and Respect to the Tribunal8
- Duty to Guard Against Discrimination, Harassment and Bias8

Introduction

In recent years, there have been significant advancements in artificial intelligence (AI) technology. With these advancements, the legal profession is increasingly gaining access to and adopting the use of generative AI. One example close to home is the relatively new addition by the Canadian Legal Information Institute (CanLII) of an “AI Analysis” feature for Prince Edward Island court cases that provides an AI generated summary of court cases.

While there are potential opportunities for lawyers to improve practice efficiency by using generative AI technology, it is essential for lawyers to approach this evolving technology with a clear understanding of their professional obligations. It is the lawyer’s responsibility to ensure that in every area of their practice they are behaving in compliance with the *Code of Professional Conduct*.

As the technology rapidly evolves, lawyers are tasked with the responsibility of ensuring that their use of generative AI remains in compliance with all applicable laws and rules. These guidelines aim to highlight best practices for lawyers using generative AI technology in a manner consistent with their professional obligations. Lawyers should also investigate the possibility that there are specific AI guidelines or directives for the court or tribunal that they are appearing before and abide by those guidelines. For further guidance or information on this topic, lawyers are encouraged to contact the Law Society of Prince Edward Island at lawsociety@lspei.pe.ca.

Interpretations

Definitions

For the purposes of these guidelines, the following definitions apply:

Artificial intelligence (AI): The capability of computers or other machines to exhibit or simulate intelligent human-like behaviour, such as learning and problem-solving.

Generative AI: A type of artificial intelligence that is capable of generating new content, such as images or text, in response to a submitted prompt by learning from a large reference database of examples. Large language models are one form of generative AI.

Professional Responsibility Considerations

These guidelines are based on existing professional responsibility obligations for lawyers, as found in the Code of professional conduct and provide guidance on how to behave consistently with such obligations when using generative AI.

Duties of Competence

Code of Professional Conduct – ss. 3.1-1, 3.1-2

A lawyer is expected to provide legal services to the standard of a competent lawyer. The *Code of Professional Conduct* instructs that a competent lawyer has a duty to perform all functions conscientiously, diligently and in a timely and cost-effective manner. And in doing so, the *Code of Professional Conduct* further instructs that the lawyer must apply intellectual capacity, judgment and deliberation to all functions.

While the use of AI technology may assist the lawyer with providing more timely service, it is essential that the lawyer's intellectual capacity, judgment and deliberation be the guiding forces in the services provided. This involves more than reviewing results from generative AI for obvious inconsistencies and errors. The competent lawyer should ensure they are applying their own legal reasoning and analysis to any AI generated outputs. It is important that the lawyer using AI tools avoids overreliance on the technology, and to continuously apply their trained knowledge, skills and judgment when providing services to clients.

Duty of Confidentiality

Code of Professional Conduct - s. 3.3-1

The duty of confidentiality is of utmost importance in the lawyer-client relationship. The lawyer has an obligation to hold in the strictest confidence all information concerning client matters and must ensure that safeguards are in place to avoid divulgence of that information without the client's explicit consent.

The duty of confidentiality extends to the lawyer's use of AI technology. It is critical that before using generative AI technology, the lawyer has a thorough understanding of the policies and security measures of the AI tool being used. The lawyer should be aware of any policies surrounding sharing data with third parties, as well as the steps taken by the developers to ensure input data is secured protected.

If there is any doubt about the efficacy of an AI tool’s security measures, to minimize the risks of a confidentiality breach, lawyers should consider avoiding providing the AI tool with any information specific to the client or their matter. It may be more prudent to input only general information when using AI tools. Further, the lawyer should obtain informed consent from the client before using the technology, as well as explain any potential risks associated with it.

Duty to Supervise and Delegate

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

Lawyers have a duty to supervise work completed by junior lawyers, students and non-lawyer staff. The lawyer remains responsible for any work that is delegated. The *Code of Professional Conduct* provides guidance on what kinds of work cannot be delegated to non-lawyers. An example would be giving legal advice.

Lawyers must ensure that those under their supervision are aware of, and applying, best practices in the use of generative AI technology. Further, the lawyer is responsible for any work that is “delegated” to a generative AI tool. Accordingly, the lawyer has the duty to review any generative AI results to ensure compliance with their professional obligations in the same manner as using human assistance in delegation of work. The lawyer is professionally responsible for any output generated.

Duty of Communication: Considerations of Quality of Service and Honesty & Candour

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

The lawyer has a duty to communicate effectively with their clients in a manner that is honest and candid. If a lawyer is using generative AI technology to assist with a client’s matter, the

lawyer should properly inform the client of the nature and scope of the use of that technology as well as any risks associated with its use.

The use of AI technology may also assist with communication with clients, including the use of AI chat software to assist with client intake or inquiries. Generative AI technology can also be used to translate complicated legal jargon into plain language. However, lawyers should exercise caution when using AI technology for communication purposes to avoid any miscommunications.

Duty to Charge Reasonably

Code of Professional Conduct – s. 3.6-1

A lawyer must not charge or accept a fee or disbursement unless it is fair, reasonable and there has been timely disclosure. What is fair and reasonable depends on the circumstances, and the *Code of Professional Conduct* commentary provides guidance on what is considered fair and reasonable. For example, consideration must be given to the time and effort required, as well as the difficulty of the matter.

Generative AI technology has the potential to significantly reduce the amount of time required to complete a task on behalf of a client. If a lawyer uses generative AI to complete work more quickly and efficiently, the lawyer should not charge a fee that they would have charged had they completed the work themselves. However, they may charge for reasonable time spent analyzing and editing work completed by generative AI tools.

The use of generative AI technology should not generate a windfall for lawyers, and the lawyer should exercise transparency with their client in their use of the technology, including how the use of the technology impacts the legal fees.

Duty of Candour and Respect to the Tribunal

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

While advocating for their clients, lawyers have a duty to treat the tribunal with candour, fairness, courtesy and respect. This includes guarding against misstatements of facts or law, or failing to disclose relevant binding authority.

Because of the risks of errors or false results in generative AI output, it is essential that lawyers carefully scrutinize any information generated by AI tools in preparing for presentation to the tribunal. This may include fact-checking information for inaccuracies or incompleteness, as well as reviewing any cited sources or authorities generated.

The lawyer should also be mindful of any directives and expectations established by the tribunal regarding the use of generative AI tools in preparation of submissions.

Duty to Guard Against Discrimination, Harassment and Bias

Code of Professional Conduct – ss. 6.3-1 and 6.3-2

Lawyers are prohibited from discriminating against or harassing clients, colleagues, staff or other persons. Because generative AI learns based on input data, it is possible that the AI tool may be trained based on biased or discriminatory information.

Lawyers should be aware of potential AI biases, and ensure that any output does not include language that is discriminatory, biased or offensive. Lawyers should also continuously learn about potential AI biases, and law firms should develop safeguards and mechanisms to identify, report and address potential AI biases.