“Any sufficiently advanced technology is indistinguishable from magic.”

--Arthur C. Clarke
ASIMOV’S THREE LAWS OF ROBOTICS

1. A ROBOT MAY NOT INJURE A HUMAN BEING OR, THROUGH INACTION, ALLOW A HUMAN BEING TO COME TO HARM.

2. A ROBOT MUST OBEY ORDERS GIVEN TO IT BY HUMAN BEINGS, EXCEPT WHERE SUCH ORDERS WOULD CONFLICT WITH THE FIRST LAW.

3. A ROBOT MUST PROTECT ITS OWN EXISTENCE AS LONG AS SUCH PROTECTION DOES NOT CONFLICT WITH THE FIRST OR SECOND LAW.
Outline


2. Current state of legal and regulatory guidance for use of AI in legal practice in Canada and abroad.

Current Problem

• The applications for generative AI in legal practice are in their infancy.
• We don’t have a clear picture of the use cases, the nature of the machine analysis or the source and reliability of the “training dataset”.
• As the professional and ethical considerations largely flow from the use case, it is currently difficult to provide general guidance.
Objectives

1. To help attendees better understand the technology of generative AI and its potential uses in legal practice.
2. To identify potential benefits and risks of lawyers using generative AI.
3. To provide ethical and professional guidance on use of generative AI.
Hierarchy of AI Concepts: From General to Specific

- Artificial Intelligence (AI)
- Machine Learning (ML)
- Deep Learning
- Generative AI
- Large Language Models
- ChatGPT
  (Specific Model)
Advent of AI in the Practice of Law: Where We Stand: Investment and Adoption

- **Investing in AI**: Law firms trying to “unlock” the potential of AI in legal practice.
- **Firms Hiring**: Firms are advertising positions, seeking Generative AI expertise.
- **Potential Uses**: The potential uses for AI are wide-ranging and uncertain.

The Big Law Jobs That Seek Generative AI Expertise

<table>
<thead>
<tr>
<th>Law Firm</th>
<th>Job Title</th>
<th>Job Descriptions and Tasks*</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latham, Dentons, Linklaters</td>
<td>Allen &amp; Overy Senior Developer</td>
<td>Work on frontend and backend development, write integration and acceptance tests</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Allen &amp; Overy Senior Software Developer In Test</td>
<td>Implement test automation best practices; drive operational improvements</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Allen &amp; Overy Development, Security, and Operations Engineer</td>
<td>Respond to Azure monitoring alerts relating to security and performance of Markets Innovation Group apps</td>
<td>N/A</td>
</tr>
<tr>
<td>Bryan Cave</td>
<td>Global Knowledge Systems Architect</td>
<td>Oversee complex data projects. Help integrate gen AI products from a knowledge management perspective</td>
<td>N/A</td>
</tr>
<tr>
<td>Leighton Palmer</td>
<td>Legal AI Adoption Manager</td>
<td>Integrate practical use cases for the GPT-4 application programming interface into firm’s legal processes</td>
<td>N/A</td>
</tr>
<tr>
<td>Dentons</td>
<td>Research Analyst</td>
<td>Will play a critical role in the adoption and education of the use of gen AI in legal and business research</td>
<td>$85,100-$142,900</td>
</tr>
<tr>
<td>Goodwin Procter</td>
<td>Senior Data Engineer</td>
<td>Design systems to support data science projects. Must understand large language models, gen AI best practices</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Big Law’s AI Jobs Lay Foundation for Tech’s Wider Use at Firms (bloomberglaw.com)
Generative AI: Transforming Legal Practice

What does it do?
• A true virtual assistant, it generates and drafts legal documents and simulates diverse legal outcomes.

How does it work?
• Built on deep learning, it's like an intern that has absorbed billions of sources of information and now assists in crafting tailored, contextually relevant content.
Generative AI: Transforming Legal Practice

Why is it different than AI I’ve used before?
• Moves beyond sorting and classifying data to create novel, case-specific legal documents.

Why does this matter to my practice?
• This form of AI transforms legal practices by drastically cutting down document drafting time, fostering creative legal strategies, and empowering practitioners to proactively identify and respond to legal challenges with unprecedented precision.
Generative AI in Legal Practice: General Use Cases

- Simplifying Document Analysis
- Boosting Legal Research
- Speeding Up Contract Drafting
- Aiding Compliance and Risk Monitoring
- Helping with Predictive Analysis
- Making Document Summarization Easier
Potential Problems with Generative AI

• Unknown and unknowable training dataset
• Reliability and accuracy ("hallucinations")
• Breach of copyright
• Confidentiality and privilege
“Human in the Loop” - Bridging AI Technology and Ethical Oversight

- **Complementary Strengths**: Humans provide critical analysis and ethical judgement, while AI offers efficient data processing.

- **Ethical Oversight**: Human oversight ensures ethically sound decisions in AI applications, which is crucial in legal settings.

- **Continuous Improvement**: Real-time human feedback refines AI, enhancing accuracy and ethical alignment over time.

- **Augmentation not Replacement**: This approach augments human roles, ensuring that the human-centric approach is preserved in AI development and application.
The Ethics of AI in the Practice of Law

What **Not To Do**

**Here's What Happens When Your Lawyer Uses ChatGPT**
A lawyer representing a man who sued an airline relied on artificial intelligence to help prepare a court filing. It did not go well.

A Man Sued Avianca Airline, His Lawyer Used ChatGPT. - The New York Times (nytimes.com);

**ChatGPT Lawyers Are Ordered to Consider Seeking Forgiveness**
Steven A. Schwartz and Peter LoDuca must pay a fine and send letters to judges named in a brief filled with fiction, a judge ordered.

ChatGPT Lawyers Are Ordered to Consider Seeking Forgiveness - The New York Times (nytimes.com)
The Ethics of AI in the Practice of Law

What To Do

• **Early Stages:** Use of, and guidance on the use of, Generative AI in the practice of law is limited and largely in its early stages. At present, there are no widely adopted legal generative AI platforms in Canada.

• **Direct Guidance:** At present, in Canada and abroad, there is a scarcity of regulation, judicial consideration, or legislation related to the use of Generative AI in legal practice.

• **Indirect Guidance:** Lawyers are, as a result, largely left to draw guidance from existing rules of professional conduct.
The Ethics of AI in the Practice of Law

Where We Stand: Professional Regulation

- **Effect of AI:** Legal systems and the teaching of law will be affected by advancements in artificial intelligence.

- **Benefits and Dangers:** The potential benefits and dangers of artificial intelligence in the legal system and generally are the subject of intense debate and scrutiny.

- **No Regulation:** There is currently no regulatory framework in Canada specific to artificial intelligence.

- **Not Recognized:** While there may come a time when legal research and submissions generated by artificial intelligence will be recognized and accorded value in our courts, that time has not yet arrived.

Ethical Guidance in British Columbia

*LSBC and BC Courts*

- **Formal Guidance:** Currently no guidance on the use of AI in legal practice from the Law Society of BC or the BC Courts.

- **Recommendations:** The LSBC Futures Task Force has provided recommendations to the LSBC for the regulation of AI technology.

- **Forthcoming Practice Resource:** The LSBC is drafting a practice resource on the use of AI which is expected in the next month or two.

- **Supreme Court of British Columbia:** The SCBC Technology Committee also considering the use of generative AI in the courts. This may lead to a practice direction.
The Law Society of British Columbia

Forthcoming Practice Resource on the Use of AI

- **Reliability:** Lawyers must not mislead a court through the use of AI.
- **Accuracy:** Lawyers must ensure the accuracy of all aspects of their submissions generated by AI.
- **Efficiency and Cost:** Lawyers must ensure the efficiency and cost-effectiveness of their services, which may require the use of AI.
- **Education:** Lawyers must do their best to stay up-to-date with AI tools and the potential efficiencies to be gained by using them.
- **Competence:** Lawyers must be aware of the issues of confidentiality and privilege in using AI.
Guidance from Canadian Courts

Alberta & Quebec Notices to the Profession

• **Caution:** Practitioners and litigants must exercise caution when referencing legal authorities or analysis derived from Large Language Models (LLMs).

• **Reliance:** For all references to case law, statutes or commentary in representations to the courts, it is essential that parties rely exclusively on authoritative sources.

• **“Human in the loop”:** any AI-generated submissions must be verified with meaningful human control, through cross-referencing with reliable legal databases and ensuring that the citations and their content hold up to scrutiny.
• **Impact of AI**: it is impossible at this time to completely and accurately predict how artificial intelligence may develop or how to exactly define the responsible use of artificial intelligence in court cases.

• **Concerns**: there are legitimate concerns about the reliability and accuracy of the information generated from the use of artificial intelligence.

• **Direction**: when artificial intelligence has been used in the preparation of materials filed with the court, the materials must indicate how artificial intelligence was used.
Guidance From Foreign Regulators: 

**Early Stages**

- **MIT Task Force on Responsible Use of Generative AI for Law:**
  
  At this point in history, we think it’s appropriate to encourage the experimentation and use of AI as part of law practice, but caution is clearly needed given the limits and flaws inherent with current widely deployed implementations.

- **MIT’s Task Force prepared draft principles:**

  1. Duty of Confidentiality to the client in all usage of AI applications;
  2. Duty of Fiduciary Care to the client in all usage of AI applications;
  3. Duty of Client Notice and Consent* to the client in all usage of AI applications;
  4. Duty of Competence in the usage and understanding of AI applications;
  5. Duty of Fiduciary Loyalty to the client in all usage of AI applications;
  6. Duty of Regulatory Compliance and respect for the rights of third parties, applicable to the usage of AI applications in your jurisdiction(s);
  7. Duty of Accountability and Supervision to maintain human oversight over all usage and outputs of AI applications;
Guidance From Foreign Regulators

California Taking the Lead

- **COPRAC**: The State Bar of California established a Committee on Professional Responsibility and Conduct.

- **Draft Guidelines**: COPRAC has prepared draft “Guidelines for Use of Generative Artificial Intelligence in the Practice of Law”.

- **Reliance on Existing Rules**: COPRAC believes existing Rules of Professional Conduct in California can be applied to the use of Generative AI, but recognizes that additional regulation may be needed as the technology further develops.

• Applicable to AI: The relevant ethical rules applicable to the use of AI should, as starting point, be drawn from the Code.

• Analytical Model: In effort to draw guidance from existing provisions of the Code, we have used the analytical model of the California State Bar’s COPRAC Guidelines.
The Law Society of British Columbia:  
*Code of Professional Conduct*

<table>
<thead>
<tr>
<th>LSBC Code Rule</th>
<th>Ethical Requirements and Considerations</th>
</tr>
</thead>
</table>
| The LSBC Rule applicable to the use of Artificial Intelligence. | Minimum Requirements  
The conduct with respect to the use of Artificial Intelligence which, in our view, is *required* to comply with the Code of Professional Conduct.  

**Best Practices**  
The conduct with respect to the use of Artificial Intelligence which, in our view, ought to be *encouraged* to maintain the highest standards within the legal profession. |
### The Law Society of British Columbia: Code of Professional Conduct

<table>
<thead>
<tr>
<th>LSBC Code Rule</th>
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</table>
| Rule 2.1-1 Duties to the State – Compliance With the Law | **Minimum Requirements:**  
  - A lawyer must comply with the law and cannot advise or assist a client in the violation of the law when using generative AI tools (COPRAC).  
  - A lawyer must analyze and ensure compliance with the laws applicable to the use of AI technology, such as privacy laws, intellectual property laws, and cybersecurity concerns (COPRAC). |
## Ethical Requirements and Considerations

<table>
<thead>
<tr>
<th>LSBC Code Rule</th>
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<tbody>
<tr>
<td><strong>Rule 2.1-2</strong></td>
<td><strong>Minimum Requirements:</strong></td>
</tr>
<tr>
<td><strong>Duty to Courts and Tribunals</strong></td>
<td>• A lawyer’s use of AI in proceedings must be characterized by candour.</td>
</tr>
<tr>
<td></td>
<td>• The lawyer must discharge their professional duties to clients “resolutely and with self-respecting independence”.</td>
</tr>
<tr>
<td></td>
<td>• A lawyer should attempt to deceive a court or tribunal by misstating facts or law through use of AI generated research or arguments.</td>
</tr>
<tr>
<td></td>
<td><strong>Best Practices:</strong></td>
</tr>
<tr>
<td></td>
<td>• A lawyer should disclose to the court or tribunal any reliance on AI generated legal research or argument.</td>
</tr>
<tr>
<td>LSBC Code Rule</td>
<td>Ethical Requirements and Considerations</td>
</tr>
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</tbody>
</table>
| Rule 2.2 Integrity | Minimum Requirements:  
• A lawyer must be honest about any use made of artificial intelligence in the course of their work for clients.  
• A lawyer must ensure that any output from the artificial intelligence is trustworthy and any use of that output is responsible.  
• A lawyer must ensure that their use of AI technology reflects favourably on the legal profession, inspires the confidence, respect and trust of clients, and avoids even the appearance of impropriety.  
Best Practices:  
• AI technology should only be used in circumstances where its benefits substantially outweigh any risks associated with its use. |
### The Law Society of British Columbia:
**Code of Professional Conduct**

<table>
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</table>
| Rule 3.1-2 Competence | **Minimum Requirements:**  
  • Before using generative AI, a lawyer should have adequate knowledge of how the technology works, its limitations, and the applicable terms of use (COPRAC).  
  • A lawyer must ensure competent use of AI technology in a manner appropriate to the matter undertaken on behalf of a client.  
  • A lawyer must ensure that the input and output of generative AI is consistent with the facts, issues, applicable law, and client objectives.  
  • A lawyer must keep abreast with developments in AI technology.  

**Best Practices:**  
• AI generated arguments should be reviewed, analyzed, supplemented and improved (COPRAC). |
<table>
<thead>
<tr>
<th>LSBC Code Rule</th>
<th>Ethical Requirements and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 3.2-2</td>
<td><strong>Minimum Requirements:</strong>&lt;br&gt;• A lawyer must be honest and candid to the client about their intended use of AI technology, and inform the client of the benefits and risks of such use.</td>
</tr>
<tr>
<td>Honesty and Candour</td>
<td><strong>Best Practices:</strong>&lt;br&gt;• The terms of a client retainer can be drafted so as to describe the use of technology and specifically address the responsible use of generative AI (COPRAC).</td>
</tr>
</tbody>
</table>
# The Law Society of British Columbia: 
## Code of Professional Conduct

<table>
<thead>
<tr>
<th>LSBC Code Rule</th>
<th>Ethical Requirements and Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 3.3</td>
<td>Minimum Requirements:</td>
</tr>
<tr>
<td>Confidentiality and Privilege</td>
<td>• A lawyer must not allow any confidential or privileged information concerning the business and affairs of a client acquired in the course of the professional relationship to be divulged through their use of AI technology.</td>
</tr>
<tr>
<td></td>
<td>• A lawyer should not use a client’s confidential or privileged information in the course of using AI technology without the consent of the client.</td>
</tr>
<tr>
<td></td>
<td>Best Practices:</td>
</tr>
<tr>
<td></td>
<td>• A lawyer should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential or privileged client information adheres to stringent security, confidentiality, and data retention protocols (COPRAC).</td>
</tr>
<tr>
<td>LSBC Code Rule</td>
<td>Ethical Requirements and Considerations</td>
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</tr>
<tr>
<td>Rule 3.6</td>
<td>Minimum Requirements:</td>
</tr>
<tr>
<td></td>
<td>• A lawyer must not charge or accept a fee for work done with the assistance of artificial intelligence unless it is fair and reasonable.</td>
</tr>
<tr>
<td></td>
<td>• Any efficiencies achieved through the use of AI technology must be reflected in any fees charged to a client (see 2018 ONSC 6959 at para. 34).</td>
</tr>
<tr>
<td>Best Practices:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A lawyer should provide clients with detailed billing that indicates AI-augmented work and associated costs for enhanced transparency (COPRAC).</td>
</tr>
<tr>
<td>LSBC Code Rule</td>
<td>Ethical Requirements and Considerations</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Rule 5.1-2</td>
<td><strong>Minimum Requirements:</strong>&lt;br&gt;• Any reliance on AI technology output in adversarial proceedings must be honest, competent and within the limits of the law.&lt;br&gt;• Any reliance on AI technology cannot misstate facts or law, present false or deceptive evidence, knowingly assert facts which are not supported by the evidence, or suppressing what ought to be disclosed.&lt;br&gt;• A lawyer must review all generative AI work for accuracy, including analysis and citations to authority, and correct any errors or misleading arguments before submission to court (COPRAC).&lt;br&gt;&lt;br&gt;<strong>Best Practices:</strong>&lt;br&gt;• A lawyer should disclose to the court any reliance on AI generated legal research or argument.</td>
</tr>
<tr>
<td>LSBC Code Rule</td>
<td>Ethical Requirements and Considerations</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Rule 6.1 Supervision and Delegation | **Minimum Requirements:**  
• A lawyer must not use AI in such a way that has the effect of a “non-lawyer” giving legal advice, acting in matters involving professional legal judgment or performing any of the duties that only a lawyer may perform.  

**Best Practices:**  
• A lawyer must supervise or review the output of AI technology in the same manner a lawyer would supervise staff and assistants to whom the lawyer delegates particular tasks and functions.  
• A lawyer should establish clear policies regarding the permissible uses of AI and provide training on the ethical and practical aspects, and pitfalls, of any generative AI use (COPRAC). |
## Guidance for Common AI Uses

*Common Sense Application of Ethical Requirements*

<table>
<thead>
<tr>
<th>Use Case</th>
<th>Impermissible Use</th>
<th>Permissible Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Research/Submissions</td>
<td>Unvetted case authorities.</td>
<td>Vetted case authorities.</td>
</tr>
<tr>
<td>Contract Drafting</td>
<td>Single input, unvetted draft.</td>
<td>Iterative inputs, vetted draft.</td>
</tr>
</tbody>
</table>
Guidance for Common AI Uses
Common Sense Application of Ethical Requirements

• Treat Generative AI like a keen but over-confident articulated student:
  1. Use where appropriate, efficient and cost-effective.
  2. Give clear and careful instructions (inputs).
  3. Supervise closely.
  4. Review and revise any work produced (outputs).

Guidance for In-House Counsel

Developing a Corporate AI Policy

1. **Determine risk tolerance:** Legal and management should assess and agree on the acceptable level of risk. What are the “must-avoid” outcomes?

2. **Determine use cases and restrictions:** Understand how the company will be using AI. What are the legal and business risks of the case cases? Are they within acceptable risk parameters?

3. **Have a chain of command:** Who makes decisions for AI use? Who owns the risk?

4. **Decide on disclosure:** What is the company going to disclose internally and externally about AI use?
Generative AI in Legal Practice

Conclusions

• **Here to stay:** Use of Generative AI in legal practice is anticipated to grow.

• **Benefits:** Use of Generative AI in legal practice has the potential to enhance lawyers’ efficiency and efficacy and litigants’ access to justice.

• **Risks:** Use of Generative AI in legal practice has the potential to undermine lawyers’ credibility and reliability through use of inaccurate AI generated information. There are also material confidentiality concerns.

• **Professional Compliance:** Use of Generative AI must comply with the law, the Code of Conduct and any applicable practice directions.

• **Advice:** Use of Generative AI which is appropriate, competent and reliable, when paired with active human oversight and review, is encouraged and may soon become a professional responsibility.
Michael McGinn
• Manager, Innovation
• +1 604 631 3230
• mmcginn@fasken.com

Michael Parrish
• Partner
• +1 604 631 4863
• mparrish@fasken.com
Disclaimer

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