

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.

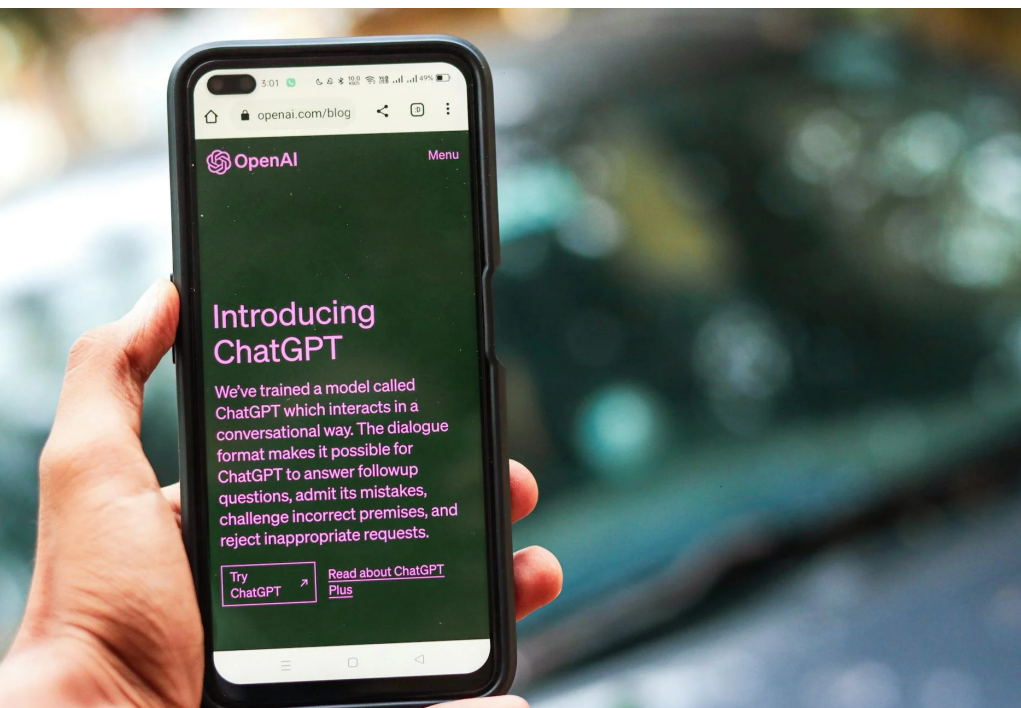
This paper is intended to help licensees as they navigate the use of generative AI tools. It is not intended to provide legal advice. If licensees have questions, they should consult the Law Society's [Technology Resource Centre](#) or contact the Law Society's [Practice Management Helpline](#).

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
<p>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>	<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.
<p>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>	<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	
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).	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)

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, articled 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.