

Lawyer ordered to pay personal costs for using fake AI-generated case law (Reddy v Saroya)

AI | Litigation | Litigation & Dispute Resolution

23 January 2026

In an avoidable yet perhaps inevitable decision, a Canadian court has imposed personal costs against a lawyer for using AI-generated submissions in materials filed with the court: *Reddy v Saroya*, 2026 ABCA 20 (CanLII).

The decision arose from an appeal decision (2025 ABCA 322), in which the Court of Appeal of Alberta allowed an appeal in part and directed further submissions from the parties to address costs. The submissions on costs were ordered because the appellant's counsel had filed a factum drafted by a contractor using a generative artificial intelligence program which contained references to non-existent authorities.

The underlying circumstances at issue in that case were recently discussed by Stephen Thiele in his article, *Lead lawyer responsible for use of AI by third party contractor (Reddy v. Saroya)*. After the appellant's counsel had filed his initial factum, it became apparent to counsel for the respondent that it contained references to fabricated case authorities. The respondent was ultimately required to address the issue of seven non-existent cases relied upon in the appellant's initial factum.

Under rule 10.50 of the *Alberta Rules of Court*, costs may be ordered payable by a lawyer personally "[i]f a lawyer for a party engages in serious misconduct".

The appellate court referred to the Supreme Court of Canada's directive that personal costs awards are appropriate only in "exceptional circumstances", where a lawyer's actions seriously undermined the authority of the courts or interfered with the administration of justice: *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 at paragraphs 26-29. An error or mistake in judgment is not enough as there must at least be a marked departure from the standard of reasonable conduct or gross neglect: *1985 Sawridge Trust v Alberta (Public Trustee)*, 2019 ABCA 243 at paragraph 44, citing *Jodoin* at paragraph 27.

In his submissions, the appellant's counsel argued that the mixed success on the appeal ought to be a key consideration for the panel in determining costs. While he acknowledged the failure to verify authorities cited in the factum, which required the respondent to file additional submissions, he submitted that the "inadvertent use of AI Hallucinations" should not attract an award against counsel pursuant to the personal costs rule. Rather, he argued, something more than mere error or inadvertence is required to levy costs against a lawyer personally.

As to the use of AI in particular, appellant's counsel argued that AI was a new and emerging technology and there would be a "chilling effect on the profession" to impose personal costs based upon his inadvertent use of AI in the circumstances where there was not fraudulent or deceitful conduct on his part, or any intention to delay or obstruct proceedings. He submitted that an award of personal costs in this case would fail to draw differences between mere inadvertence and more serious misconduct.

The Court of Appeal did not agree with these submissions. The Court noted that there is no denying that the use of AI is becoming "more prevalent in society," which led to the issuance in October 2023 of a Notice to the Public and Legal Profession by the Alberta courts, applicable to all lawyers and litigants, titled *Ensuring the Integrity of Court Submissions When Using Large Language Models*. The Notice was intended to reinforce the integrity and credibility of legal proceedings and, in the appellate court's words, was "to ensure that litigants do not provide inaccurate or misleading information to courts and do not waste the time and resources of the judiciary and other litigants. The administration of justice demands no less".

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

The Court noted that if the appellant's counsel had complied with the October 2023 Notice and exercised caution, the issues regarding the non-existent authorities in the factum would not have occurred. Instead, the use of AI resulted in a misleading factum being filed with the Court and led to a waste of time and resources. The appellate panel was required to assess the magnitude of the AI issue and associated submissions.

Further, the Court of Appeal did not agree that the case involved "mere inadvertence". In that regard, factums filed with the Court were required to include a table of authorities with a hyperlink to each authority cited, or copies or extracts of any authorities for which a hyperlink is not available. Since this rule had not been complied with, nearly half of the cases listed in the appellant's table of authorities were non-existent. The use of a third party contractor did not absolve counsel of the need to adequately review work prepared by someone else. It was, in the Court's view, incumbent on counsel to check and correct any misleading information in a factum.

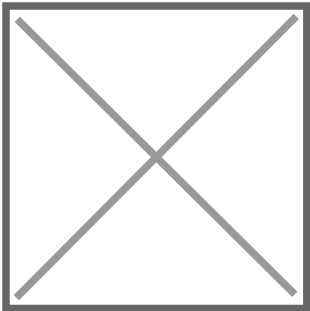
In the specific circumstances of the case, the Court of Appeal concluded that there was sufficiently serious misconduct to warrant an award of personal costs payable by the appellant's lead counsel. The failure to comply with the October 2023 Notice and counsel's conduct in the events that followed constituted "a marked departure from reasonable conduct that seriously interfered with the administration of justice".

The amount of costs ordered by the appellate court was \$17,550, plus GST, which was reflective of the steps the respondent had to take, including the costs associated with making submissions to a Case Management Officer, filing a supplemental factum to address new arguments, and providing further oral and written submissions with respect to the scope of the amended factum and costs to the Court of Appeal.

The decision illustrates one of the consequences that may arise when a lawyer files written submissions to a court that is based upon non-existent authorities. Courts rely on counsel and all litigants to base their submissions on actual authorities. One can easily imagine that if the use of AI to generate fake case law persists in the profession, the consequences for a lawyer may be more serious than personal costs. A PDF version is available for download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com