

Litigant's misuse of AI significantly contributes to dismissal of his unperfected appeal (*Arbuckle v. Tanner*)

Dismissal | Litigation & Dispute Resolution | Misuse of AI

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Courts often rely on the “interests of justice” to ensure that court procedures are strictly followed and that litigants do not abuse the process. In this regard, the use of artificial intelligence by litigants to conduct legal research or produce documents that are filed in court has placed courts in awkward positions, requiring them to make difficult decisions which can interfere with a litigant's right to access to justice. However, where a litigant deliberately misuses artificial intelligence which misleads a court, results in an improper record of a proceeding being filed, and causes prejudice to an opponent, the court is well-justified to dismiss a proceeding.

In *Arbuckle v. Tanner*, 2026 NSCA 62, the Nova Scotia Court of Appeal dismissed a litigant's appeal of a trial decision in a family law proceeding for several reasons, including that he misused AI in creating a transcription of the trial proceeding. The transcription contained 39 discrepancies from the actual certified transcript.

The parties were an unmarried couple with a 5-month-old child at the time of their separation. In April 2024, the mother applied for relief under the *Parenting and Support Act* and was granted primary care and final decision-making for the child, with the father being given parenting time. The father was also ordered to pay child support.

The father appealed this ruling on the grounds that the judge made several legal errors, misapprehended the evidence and made findings unsupported by the evidence. Under Nova Scotia's court rules, the father was required to perfect his appeal by, among other things, “[...]causing] a transcript of the proceeding to be prepared by a certified court reporter, unless legislation provides otherwise or a judge permits.”

Furthermore, an appellant must provide a certificate of readiness which, among other things, must certify that a transcription of audio recordings of the proceeding has been ordered from a certified court reporter and that the appellant has been informed by the reporter of the date when the transcription will be available.

The father apparently complied with the rules, filing his certificate of readiness and certifying that he had ordered the transcription from a court reporting service and had been informed that they would be completed no later than March 31, 2026.

However, the father's certification was false.

Rather than ordering a transcription of the audio recordings of the court proceeding, the father used several AI tools to prepare a transcription and the appeal book.

The lawyer for the mother discovered issues in connection with the father's materials when she first noticed that the father's appeal book did not contain a full transcript of the proceeding under appeal. After the father corrected his appeal book to include a purportedly full transcript, the lawyer for the mother advised the court that his transcript still raised significant issues.

The mother's lawyer had ordered a transcript from another transcription service provider from the one purportedly used by the father and compared it to the father's transcript. In a letter to the court, the mother's lawyer stated, in part:

Upon review, there are material differences between the Appellant's Transcript versus the Respondent's Transcript. These material differences include testimonial evidence in the Appellant's Transcript that is either inaccurately transcribed or that is not stated by the witness at all, and entire exchanges between counsel for the parties and the Learned Trial Justice that are reflected in the Respondent's Transcript but missing entirely from the Appellant's Transcript.

The mother's lawyer specifically identified 39 discrepancies between the transcript she had ordered and the father's filed transcript. To further verify the authenticity of the father's transcript, the mother's lawyer called the court reporter who purportedly certified the father's transcript. The court reporter replied that she had not transcribed or certified the transcriptions.

In his factum in support of the appeal, the father referenced the impugned transcript 24 times. His factum ironically alleged that the trial judge had misapprehended his evidence by attributing "phantom testimony" to him, relying on unsworn submissions to make findings of fact and ignoring evidence.

The mother brought a motion to dismiss the father's appeal on the grounds that:

1. The father failed to perfect his appeal as required by Rule 90.43(1)(d);
2. The father had not shown a willingness or ability to follow deadlines or the Rules generally; and
3. She incurred prejudice in terms of time, cost and integrity of the appeal process.

The mother emphasized that the appeal should be dismissed because the father had likely intentionally filed uncertified transcriptions to support his appeal and had used a false court reporter's certification and signature.

While the father admitted that his transcription was not certified and that there were discrepancies between his transcript and the mother's certified transcription, he argued that the court should not dismiss his appeal. Among other reasons, the father contended that the "substantive testimony" upon which he was relying "[remained] materially consistent with the audio recording", and, moreover, that dismissing his appeal would be a miscarriage of justice.

The court concluded that the father's appeal had not been perfected. Accordingly, the court had a discretion to dismiss it.

The court explained that while *Morris v. Comeau*, 2026 NSCA 46 set out a list of factors to be considered when exercising this discretion, the ultimate question was whether, given all of the circumstances, it was in the interests of justice to dismiss the appeal.

The interests of justice did not favour the father. He was not compliant with the court rules, including providing a certificate of readiness that he knew was inaccurate and filing uncertified transcripts.

In addition, the court stated that the father was responsible for the documents that he filed notwithstanding his apparent use of several AI tools to create his documents.

Although the father argued that his appeal was made in good faith, the court found that he had a record of unsuccessful appeal litigation and had taken much of the court's time on unmeritorious matters in the family law proceeding.

Lastly, the court held that even though there would be prejudice to the father if his appeal was dismissed, his conduct was concerning to the administration of justice, and that the mother also suffered prejudice.

In the result, the court concluded:

The mischief that occurred in this case implicates the integrity of the appeal process. It is in the interests of justice to protect the process for individual litigants and for the benefit of the administration of justice generally. Although I consider [the father's] plea to allow him to perfect his appeal and continue to a substantive resolution, I find it a disposition that I cannot endorse.

The key takeaway from this case is that litigants must be extremely careful when using AI tools to assist in the preparation of their court documents. All litigants must strictly adhere to the requirements of court rules and cannot avoid the consequences of a failure to comply with them by casting blame on an AI tool. Courts will simply not permit non-compliance with the rules when they are disguised as compliance. A PDF version is available to download[here](#).



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