

KEEPING CURRENT

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Using Generative AI in court: a penny wise, a pound foolish (*T.B. v. K.M and X.L v. Z.L.*)

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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As a research lawyer, I am threatened to be replaced by generative artificial intelligence that purports to conduct legal research much like new machines threatened the jobs of labourers during the industrial revolution. While some electronic research tools like Quicklaw and Westlaw have been around for decades, the potential impact of AI on legal research is not yet clear. Although my colleagues continue to contend that AI will generate more legal work and are supportive of my valuable contribution to their practices, I am not fully convinced that the increasing use of AI will not displace my primary role as a litigation support lawyer. Accordingly, I feel that my role will ultimately need to evolve, or that I might need to seek alternative employment.

Indeed, I may not be the only lawyer impacted by AI because open AI is providing everyone who has access to a computer with tools that, among other things, (a) answers questions about the law, (b) provides references to cases to support answers to legal questions and (c) assists in the assembly of written

materials which can be filed in court. The high cost of legal services has already led to a growing number of "self-represented" litigants appearing before courts and tribunals, and the availability of open AI is adding fuel to this trend.

However, like lawyers, self-represented litigants should be cognizant of the fact that open AI hallucinates cases and that courts are becoming more inclined to penalize litigants for the use of fake cases and the misguided legal principles for which they stand. In this regard, while using open AI may be significantly less expensive than traditional legal research techniques or hiring a lawyer, doing so may be penny wise, but a pound foolish, as in general, courts are penalizing parties for the misuse of AI in cost awards.

For example, in the October 15, 2025 decision of *T.B. v. K.M.*, [2025 SKKB 176 \(CanLII\)](#), a Saskatchewan family law division judge was required to consider the impact of the use of AI when determining the amount of costs that should be awarded to the successful party, K.M.

The case concerned whether K.M. should be entitled to increased parenting time notwithstanding that a trial was only months away.

Although T.B. submitted that the *status quo* should not be changed in the absence of a child being at risk or other compelling reason, the court found that many of T.B.'s concerns about granting K.M. increased parenting time were speculative and that K.M.'s requests was not a change in the status quo. Accordingly, K.M. was granted increased parenting time. This result should have attracted a costs award in K.M.'s favour.

However, the court refused to award K.M. costs because material K.M. filed with the court, including a brief of law, referenced cases that either did not exist or that misrepresented the principles K.M. suggested that they represented.

The court explained, in part:

K.M. referenced *A.M. v. C.H.*, 2019 SKQB 162...which is actually *Watch v. Live Nation Entertainment Inc.* He referenced *Baker v. Baker*, 2007 ONCA 329...which is actually *R. v. Mariani. R.C. v. R.C.*, 2013 NSC 71...was cited in the brief but it was actually *Antigonish/Guysborough Federation of Agriculture v. Antigonish County (Municipality)*. K.M. referenced *M.K. v. S.K.*, 2010 ABQB...which is actually *Magnus v. Condominium Plan No. 9511228*.

Based on these errors and others, the court found that K.M.'s brief was of no use.

The court further stated that K.M. was responsible to ensure that the materials he filed were accurate, and that, like a lawyer, K.M., as a self-represented individual, was obligated not to mislead the court.

Notwithstanding K.M.'s contention that he did not

prepare the material and did not intend to mislead the court, the court found that fabricating the law was unacceptable and that K.M. was responsible for ensuring the existence of the cases he cited.

In [X.L. v. Z.L., 2025 ONSC 5880 \(CanLII\)](#), an Ontario judge ordered some of the parties involved therein to address the use of AI-generated submissions in their cost submissions following a family law trial.

The court noted that in written and oral submissions, some of respondents (S and Y and, maybe Z.L.) had used artificial intelligence and cited fake cases or hyperlinked to cases which did not stand, even remotely, for the propositions submitted.

The court stated, in part, as follows:

- On page two of her written submissions, [S] cited *Bank of Montreal v. Wilder*, [1986] 2 S.C.R. 118 for the proposition that fraudulent intent must be clearly proven and cannot be inferred from financial distress or suspicion. Upon clicking the hyperlink, the user is directed to *Schuldt v. The Queen*, 1985 CanLII 20 (SCC)...a case that deals with an appeal involving a break and enter case. The proper citation for the *Wilder* case is 1986 CanLII 2 (SCC)...*Wilder* has nothing to do with fraud whatsoever; it deals with a bank action on guarantees signed by shareholders of a company.
- The next citation in [S's] written submissions is *Gowling Lafleur Henderson LLP v. Shorter*, 2011 ONSC 5840. Clicking on the link takes the user to a CanLII error page. The case cannot be found on Westlaw or Lexis.
- [Y] referred the court to *Ontario Inc. v. Ranch Heating and Air conditioning (Barrie) Limited*, 2012 ONSC 182 as authority for



the proposition that the wife needed to demonstrate an actual scheme to conceal or divert assets. The case involves negligence causing a fire.

In the result, the court concluded that the authorities submitted by S and Y were AI hallucinations.

While we await the potential cost sanctions that might be imposed on S and Y in this case, the Ontario courts are signalling that more severe sanctions might soon be imposed on lawyers and litigants who misuse AI.

On November 13, 2025, the [Ontario Superior Court of Justice issued new practice directions on the responsible use of AI in court proceedings](#) for both civil and family proceedings.

Judges in civil cases have now been given guidance to consider the misuse of AI to not only impose cost sanctions against lawyers and litigants, but, depending on the specific facts and circumstances of the case, to also order a public reprimand of a lawyer or litigant, adjourn a hearing or dismiss a matter, initiate contempt proceedings, and, in the case of a lawyer, make a referral to the Law Society of Ontario.

Similarly, the potential sanctions for the misuse of AI for family court proceedings provides:

The court has a range of powers to ensure that counsel, FLSPs and litigants comply with their duties to the court. Where those duties are not complied with, the court's powers include, but are not limited to, public reprimand of the counsel, FLSPs, or litigant, ordering costs, fines and/or penalties, adjourning or dismissing, as the case may be, a hearing, motion, conference or case, the initiation of contempt proceedings, and in regards to counsel and FLSPs, referral to the Law Society of Ontario. In each instance, the court's response will depend on the facts and circumstances of the case.

Both directions state that inadvertence, which has often been used as an excuse for the citation of fake cases, will not be tolerated.

In my view, the new Practice Directions express the frustration of the courts in the growing misuse of AI. The citation of fake cases is putting the integrity of the justice system at risk. The new Practice Directions send a refreshing message that the justice system is prepared to fight back against the misuse of AI and will no longer simply slap lawyers and litigants on the wrist for the misuse of AI through cost awards.

As someone who has devoted over 30 years of his career to conducting in-depth legal research to ensure that my answers to legal questions leave little room for legal error, I welcome the new Practice Directions. Perhaps they will prompt lawyers who lack office support and self-represented litigants to engage lawyers like me to review their material and verify the accuracy of their authorities. In many ways, this might be a wise expenditure. It would certainly avoid potentially severe sanctions.

(This blog was not written using generative artificial intelligence.)

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

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