

Navigating AI in the Courtroom: Insights from the Canadian Judicial Council's New Guidelines

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1 November 2024

In today's age of rapid advancement in the development to Artificial Intelligence technology ("AI"), Canadian courts are facing increased pressure to respond to its use. Although some view the use of AI in the Canadian justice system as a potential threat to maintaining the rule of law and a strong democracy, AI may provide valuable opportunities to the functioning of the Canadian justice system, particularly in connection with improving efficiency in court operations, reducing workloads, supporting the judicial role and enhancing access to justice.

In response to the growing use of AI, the Canadian Judicial Council ("CJC") has recently released their 2024 Guidelines for the Use of Artificial Intelligence in Canadian courts (the "**Guidelines**"). The full-text of CJC's Guidelines for the Use of Artificial Intelligence in Canadian Courts can be found [here](#).

Established in 1971, the CJC consists of chief justices and associate chief justices from provincial, territorial, and federal courts. The CJC's core mandate is to promote judicial excellence and uphold public confidence in the judiciary.

In this regard, the purpose of the Guidelines is to create a framework for the use of AI tools to support or enhance a judiciary's function and to raise awareness of the risks inherent in using AI in judicial decision-making. Emphasizing the core principles that form the ethical backbone of Canadian judicial conduct, the Guidelines address the ethical, legal, and operational implications of AI, and duly consider the principles of judicial independence and transparency.

Further, the Guidelines serve as a helpful reminder to judges and legal practitioners that the use of AI can offer innovative solutions to longstanding practical challenges within the justice system, while acknowledging that it cannot replace judicial independence in decision-making, which would risk eroding public confidence in our courts.

Key Principles in the Guidelines

The CJC's Guidelines revolve around the following key principles:

- 1. Transparency and Explainability:** AI tools used to support or enhance the judicial role must be transparent. In particular, as Canadian courts discover more ways to deploy AI tools to improve efficiency in case management and alternative dispute resolution, judges, court staff, and the public need to understand how AI systems reach conclusions and provide explanations for their output. This, in turn, will assist judges in providing reasoned explanations for their decisions in law. Explainability is vital for ensuring accountability in judicial decision-making.
- 2. Maintaining Judicial Independence and Ethics:** The planning, procurement, and deployment of generative AI in Canadian courts must firmly uphold the fundamental principle of judicial independence. AI tools should assist but never override human judgment. Judges maintain the ultimate responsibility for their decisions and need to oversee the use of AI, alongside other stakeholders such as the executive branch of government and court administration. This proposed *modus operandi* will preserve judicial independence, preventing an overreliance on AI in resolving disputes.
- 3. Reducing Bias and Preserving Impartiality:** Recognizing that AI systems can reflect biases present in their data outputs, the CJC encourages thorough vetting and evaluation of AI tools. Judges and court staff are urged to monitor for potential biases that can arise against marginalized groups to preserve equality and fairness. By carefully assessing AI algorithms, the judiciary can preserve impartiality, which is one of the cornerstones of the justice system.

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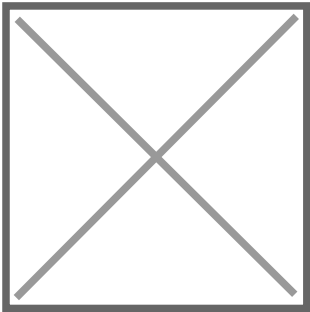
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4. **Bolstering Privacy and Data Security:** There is a risk that the integration of AI tools in Canadian courts brings unique information security challenges and requires strict privacy protections. In their use of AI, judges must ensure that the systems comply with all relevant data protection laws and have the capacity to handle sensitive information securely. This focus on confidentiality is essential for preserving public trust in the court system and safeguarding the privacy rights of individuals involved in legal proceedings.
5. **Improving Judicial Education and Training:** To maximize the responsible use of AI, the CJC encourages judges and court staff to engage in ongoing education on AI's functionality, benefits, and risks. A combined approach to training of judges and the provision of technical support for AI integration in court administration will ensure that the judiciary is well-equipped with best practices for interacting with the technology and identifying potential risks.

Overall, the Guidelines provide a roadmap for the judiciary and legal professionals to navigate AI's complex landscape. Using AI tools – whether in research, case analysis, or decision-making – has the potential to strengthen legal practice. Accordingly, as the AI transformation continues to evolve, it is important for both sides to become familiar with the technology's potential valuable applications and its potential risks. A PDF version is available to download [here](#).

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

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